

No. 2395

United States

Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

CENTRAL NATIONAL FIRE INSURANCE
COMPANY OF CHICAGO, ILLINOIS, a
Corporation,

Plaintiff in Error,

vs.

WILLIAM BLACK,

Defendant in Error.

VOLUME II.

(Pages 225 to 504, Inclusive.)

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Southern Division.

Filed

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(Testimony of William Black.)

Q. It was not the regular launch that crossed the river?

A. Yes, sir, it is the regular launch that crossed the river.

Q. What is the name of it?

A. Captain Haggbloom's launch, the "Hulda I." It was on the 22d. It was on Friday night.

Q. It was on that trip, anyway?

A. The 22d, I think so, yes.

Q. I believe you stated yesterday you did not know whether your license expired the first of July or the fifteenth of July, didn't you?

A. I believe I stated it expired about the 12th of July, I would not be positive.

Q. You went over to Long Beach on the 1st of July, 1908, did you? A. Went from where?

Q. You went over to Long Beach on the 1st of July, 1908?

Mr. LANGHORNE.—He has answered that question about four times.

A. I told you I went over from Astoria, on Friday, I think it was—(interrupted).

Q. I mean when you moved your saloon from Ilwaco.

A. I opened on the 12th day of July, that is the day I opened there.

Q. The goods went from Long Beach, were shipped from,—over the Ilwaco railroad?

A. Yes, I had some brought on the railroad and some on the [211] wagon that I did not have room for.

(Testimony of William Black.)

Mr. LANGHORNE.—I object to that as all having been gone over before.

Q. I mean the goods you bought after you moved to Long Beach, you received them over the Ilwaco railroad?

A. Some of them and I think I had a lot of them hauled up by team. I tried to patronize Haggbloom all I could. He was a poor man and I wanted to give him whatever I could for his boat, freight that came from San Francisco, from California and other places. He hauled lots of freight for me.

Q. He carried it over on his launch?

A. Yes, sir.

Q. And from Ilwaco to Long Beach it was carried on the railroad?

A. Carried by teams—no, sir. The railroad and I did not do business. He was running in opposition to the railroad and of course they did not take much freight, and so I had to get teams to haul it up. The teams hauled beer and ice and such stuff as that from Ilwaco. He brought them over on his launch. They all signed up to support him and help him out, but I was about the only one that stayed with him.

Q. Did you receive any goods at Ilwaco or at Long Beach over the Ilwaco railroad?

A. I have got goods that way, yes, sir.

Q. Most all of them? A. Most by teams.

Q. Most by team? A. Yes, sir. [212]

Q. Now, I would like to ask you something about this purchase that Mr. Kayler testified about, this

(Testimony of William Black.)

sale. How long have you known Mr. Black, the man you made the deal with?

A. A number of years off and on.

Q. When was that deal called off?

A. It was never called off.

Q. It was still pending at the time of the fire?

A. Still pending, yes, sir.

Q. You had your invoice taken at the time you took your last policy, did you?

A. I took the invoice—when I got his letter, shortly after I got Mr. Mack's letter.

Q. That was in May, was it?

A. That was in May, I think so.

Q. Now, there was three duplicates of this invoice made out? A. I do not remember.

Q. Three copies; you do not remember that?

A. I do not know.

Q. You received one, however?

A. I had one that I took with me, yes, sir.

Q. Is this one that is attached to the proof of loss, one of them? Is this the one that was left with Mr. Kayler (indicating)?

A. I could not say. I do not know whether it is or not.

Redirect Examination.

(By Mr. LANGHORNE.)

Q. How many gallons to a barrel was there in the consignment of Old Crow Whiskey?

A. I think when I bought it it was forty-seven and a fraction [213] gallons when I first bought it.

Q. I believe you already gave to the jury your

(Testimony of William Black.)

idea of evaporation?

A. Yes, but I would like to explain another thing.

Q. Briefly.

A. The difference between rye and bourbon whiskey. The bourbon whiskey continues to improve for years and years and rye whiskey has a limit. After eight years it ceases, that is, the quality ceases to improve, therefore, the evaporation ceases in rye, so whenever you are drinking young whiskey, the four-year old, you are drinking the equal of eight-year old bourbon or more.

Q. What was Cedar Brook Whiskey?

A. That was a bourbon.

Q. How many gallons to a barrel of that?

A. It would evaporate down—(interrupted).

Q. How many originally?

A. There were forty-seven, forty-eight and forty-nine gallons.

Q. To a barrel? A. To a barrel, yes, sir.

Q. Now, the Green River, how many gallons to a barrel? A. About the same.

Q. And the Penwick Rye?

A. About the same, same sized barrels, the barrels are all about the same size.

Q. About how many gallons in a barrel of Fox Mountain Whiskey?

A. I do not remember how many was in that.

Q. Approximate that as near as you can. [214]

A. Oh, probably thirty or thirty-five gallons.

Q. Two barrels of A. J. McBrayer's Single Stamp whiskey, how many gallons to a barrel?

(Testimony of William Black.)

A. Something like forty-nine gallons each.

Q. There is one thing more I want to clear up. When you made this original purchase, you purchased five barrels of Penwick Rye?

A. Five, yes, sir.

Q. And you had three on hand at the time—(interrupted).

Mr. COLE.—I object to that as leading.

Q. How many did you have on hand at the time of the fire? A. Three.

Q. And you disposed of the other two?

A. Yes, sir.

Q. Now as to the liquor, how many—how much of that did you dispose, of that 1906? A. 1906?

Q. Yes.

A. I had five barrels, one I had just tapped it and I rolled her up there and just put the faucet and the air hole in it.

Q. How many barrels of Cedar Brook did you buy originally? A. Five.

Q. How many did you have? A. Four.

Q. Now, the two barrels of Single Stamp, do you remember when you got that?

A. I got that in April.

Q. You bought other whiskeys between that time?

A. Yes, sir. [215]

Q. Other barrel whiskey? A. Yes, two.

Q. That you sold from time to time?

A. Oh, I sold lots of younger whiskey, such as Melwood, Double Stamp goods, and Brown-Foreman & Company, younger whiskey.

(Testimony of William Black.)

Q. Do you remember how many cigars were contained in the sale made by the sheriff to you there in September 1911?

A. No, sir, I could not say how many there was. I never counted them. I bought the stuff at a lump sale.

Q. How long was it before the fire that you purchased these cigars that you spoke of this morning from Mr. Hagerty? A. Sometime in May.

Q. In May?

A. Sometime in May, I do not know the exact date. I disremember now.

Q. Do you remember a fellow by the name of Hanneman, a local saloon-keeper who went out of business there? A. Yes, sir.

Q. Did you buy any liquor from him?

A. Yes, sir.

Q. When did he go out of business?

A. That was in 1911. He came to me and—
(interrupted).

Q. I just wanted to know the fact whether you bought any liquors or not. A. Yes, sir.

Q. How many? A. Some champagne.

Q. What else? A. Some imported brandy.

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Q. What else?

A. Some imported English gin and some bulk gin in a demijohn, in one of these big demijohns; I do not know how many gallons there are in them, and some other stuff that I disremember.

Q. Now, you spoke awhile ago about removing this

(Testimony of William Black.)

liquor that was burned, from an addition—(interrupted).

A. It was not an addition. It was a building a little ways back, probably twenty-five feet.

Q. When was that removed? A. In May.

Q. What year? A. 1912.

Q. Is that the article you spoke of a minute ago in answer to Mr. Cole's question (indicating)?

A. Yes, sir.

Mr. LANGHORNE.—I will offer that in evidence.

No objections.

The COURT.—It may be admitted.

Whereupon said paper was admitted in evidence and marked Plaintiff's Exhibit 5 of this date.

Recross-examination.

(By Mr. COLE.)

Q. This liquor you said you bought from the sheriff's sale you afterwards sold a part of that to a saloon-keeper in Ilwaco by the name of Fred Croosley?

A. Just a few bottles. Somebody broke into his saloon and stole everything and he came up and he bought a few miscellaneous bottles.

Q. How much, do you know? [217]

A. I do not remember. Enough to hold him over until he could get some stock from Portland.

Q. If you took in a hundred dollars over the bar, about how much of that stock would go out in value?

A. I am going to explain this to you and to the jury. The most of the stuff that was drank down there was beer, and when the season was over I did

(Testimony of William Black.)

not handle no keg beer, because I could not sell it fast enough. It would stale and I would lose on it, and therefore I handled bottle beer, and the principal sale was bottle beer. Once in a while, you would sell a little whiskey.

Q. Will you answer that? A. What?

Q. Can you tell me if you took in a hundred dollars in sales, how much of your stock would go out?

A. The whiskey business is figured about fifty per cent profit.

Q. All the way through, cigars and beer and everything?

A. About that; that is the basis that the saloonmen figure on, fifty per cent profit.

(Witness excused.) [218]

[Testimony of Joe Anderson, for Plaintiff.]

JOE ANDERSON, a witness produced on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. What is your name? A. Joe Anderson.

Q. Where do you live?

A. Seaview, Washington.

Q. How long have you lived there?

A. I have been there for twelve years.

Q. How close is Seaview to Long Beach?

A. Two miles.

Q. What is your business?

A. Contractor and builder.

(Testimony of Joe Anderson.)

Q. You know Mr. Black, do you?

A. Yes, sir.

Q. Are you acquainted with his place of business?

A. Yes, sir.

Q. Did you ever do any work for him in the year of 1912? A. Yes, sir.

Q. What was it, Mr. Anderson?

A. I built an office—well, there was an old ice-box right back of the bar, and I tore that out and put an office instead.

Q. Did you help build and construct a rack for the holding of liquor barrels also? A. No, sir.

Q. At that time or at any other time, did you help to move some barrels of liquor into the saloon room or into the saloon proper? [219]

A. Yes, I had to move part of it.

Q. Where from?

A. Well, some of the case goods was standing right in my road where I was building the office and I moved it from over to where the rest was.

Q. Where was the barrel goods moved from?

A. There was four barrels of goods lying on the floor and I and my brother rolled them up on the rack in the front room.

Q. Did you bring in any from any other place?

A. It was all brought in when I came there.

Q. How many barrels of goods do you know there was?

A. I do not exactly remember, but between twenty and twenty-five barrels.

(Testimony of Joe Anderson.)

Q. How was they as to being full or empty, do you know?

A. To my knowledge most of them was full.

Q. And that was in what year and what month?

A. I think it was between the 10th and the 18th of May, 1912.

Q. Do you know anything about the case goods that were in there in that saloon?

A. I know it was all—(interrupted).

Q. About the number of cases, I mean. Did you have any general idea?

A. Well, there was a good many cases. There was one whole wall full, and some standing on the end of the building, the building was sixty feet long and twenty-two feet wide.

Q. That was a matter I overlooked. Can you give the jury an approximate idea of how many case goods there was? [220]

A. Well—(interrupted).

Q. If you know.

A. Between a hundred and fifty and a hundred and seventy cases I think.

Q. How was his saloon stock generally, that is as to whether it was a pretty full stock of goods in the saloon or a meagre stock? A. It was a full stock.

Q. How about the cigars, do you know?

A. I could not tell much about the cigars. I know there was lots of cigars, but how many there was I could not say; a good many of them.

Q. I do not suppose you know anything about the value of liquors. Were you ever in that business?

(Testimony of Joe Anderson.)

A. No, sir.

Cross-examination.

(By Mr. COLE.)

Q. How long have you known Mr. Black?

A. I have known Mr. Black for the twelve years I have been there.

Q. You have quite a number of business dealings with him?

A. Well, I done Mr. Black's work for the last three or four years.

Q. He holds a good many of your bills, down there?

A. No, sir.

Q. Did he ever have one? A. He had one.

Q. Did you say some liquors were moved from an outbuilding into the saloon itself?

A. Yes, there was a storeroom back of the saloon.
[221]

Q. Did this outbuilding burn in the fire?

A. No, sir, I tore it down last spring. That building is about probably fifty or sixty feet from the saloon.

Q. You tore it down in the spring of 1912?

A. 1913.

Q. The spring of this year?

A. Mr. Black made some alterations in his hotel and built a new kitchen and some rooms and I used part of the lumber of that outhouse for the kitchen.

Q. You do not know whether these barrels were full or empty?

A. I know the barrels I rolled around and lifted were full.

(Testimony of Joe Anderson.)

Q. How many did you lift?

A. Probably I moved seven or eight.

Q. Can you estimate their weight?

A. No, sir, I cannot estimate no weight by rolling a barrel.

Q. Did you move these alone?

A. Well, I had a couple of men with me. Some I moved alone and some my men moved.

Q. And all these that you moved were full, were they?

A. Well, I do not know whether they were exactly full but they were heavy, I know that.

Q. Do you know how much an empty whiskey barrel weighs? A. No, sir.

Q. Do you know how much one weighs that is full of whiskey?

A. When the barrel is full of whiskey?

Q. Yes. A. No, sir.

Q. Did you tap any of the other barrels?

A. Well, I have been in Mr. Black's place several times. [222] Every time I pass there I go in and take a drink and I have tasted lots of goods, some of them I tapped myself and I know most of the barrels were full.

Q. When you say most of them were full, did you go around and knock on any of them?

A. No, sir, I never knocked on any of them.

Q. What means did you have of knowing that they were full?

A. Because, when you go into a place of business and you see—I know just about what kind of whiskey

(Testimony of Joe Anderson.)

they drink there and I know he had the kind everybody drinks and I know they were full.

Q. Did you say you helped him move in some from an outbuilding? A. No, sir.

Q. Those rolled were all inside of the building?

A. Yes, all of his stock was moved in from the warehouse to the saloon when I went to work.

Q. Before you went there?

A. When I started to work.

Q. When you were there, there was about twenty-one?

A. Between twenty and twenty-five. I could not say whether it was twenty-two or twenty-three,—there is between twenty and twenty-five.

Q. That is just an estimate, not the exact amount?

A. No, it is not the exact amount. I know the length of the building, and how many tiers of barrels there was.

Q. All in the front room?

A. They were all in the front room except a few in the back room.

Q. About how many were in the back room?
[223]

A. I don't know exactly the number but—(interrupted).

Q. Half of them?

A. Oh, no. Three or four or five barrels.

Q. How about the case goods, did you notice any case goods?

A. The case goods was all in the back room except what was in the show cases in the front, in the bar-room.

(Testimony of Joe Anderson.)

Q. You could not give a very accurate estimate of how many of these barrels had been tapped, could you? A. No, sir.

(Witness excused.)

Noon recess. [224]

[**Testimony of William H. Armstrong, for Plaintiff.**]

WILLIAM H. ARMSTRONG, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. Will you tell the Court and jury your name?

A. William H. Armstrong.

Q. And your residence?

A. 3225 North 20th street, Tacoma.

Q. How long have you resided here in Tacoma?

A. Twelve years.

Q. Are you connected with the Olympic Club, Mr. Armstrong? A. Yes, sir.

Q. What is the business of that club?

A. Retail liquors.

Q. How long have you been in that business?

A. With the club?

Q. How long have you been in the retail liquor business? A. About twenty years.

Q. I suppose during that time you have become somewhat acquainted with the prices of various liquors? A. Yes, buying.

Q. Have you bought considerable liquors?

A. Yes, sir.

(Testimony of William H. Armstrong.)

Q. Extending over a period of how many years?

A. Fifteen years, purchasing.

Q. Will you kindly tell the jury whether or not the value of liquor increases with age?

A. Yes, it does.

Q. Will you tell the jury what the reasonable market value of Old Crow, of a brand of liquor known as Old Crow [225] liquor, 1906, would be worth per gallon in June, 1912?

Mr. COLE.—We object to that on the ground that he has not qualified, no proper foundation laid.

The COURT.—Objection overruled.

Exception allowed.

Q. Answer the question.

A. I should judge about five and a half or six dollars a gallon. Of course, a good deal depends on whiskies when they get to an age like that, how much would be in the market or what sources you buy it from.

Q. Do you know whether or not Old Crow liquor was a prevalent liquor, for sale, last year?

A. Old Crow is one of the leading brands of liquors here for a good many years.

Q. Yes, but was it for sale in large quantities? That is what I mean, last year?

A. I do not believe that age of whiskey was. I think they had run pretty well out. They were selling, four and five year old whiskey, mostly four year old.

Q. Then, if I understand you correctly, the older liquor gets, by reason of its age it becomes more valu-

(Testimony of William H. Armstrong.)

able? A. Yes, sir.

Q. Now, taking up Cedar Brook, McBrayer's Cedar Brook; are you acquainted with that brand of whiskey? A. Yes, sir.

Q. Of the 1903 distillation, what would be a fair market price per gallon for that liquor in June of last year?

A. Is this based on the sale per gallon, per barrel or is it retail?

Q. If I understand—I mean by the gallon, where it is sold [226] in gallon quantities.

A. It ought to be worth seven or seven and a half to eight dollars a gallon.

Q. That is at retail, but what is its fair market value per gallon?

Mr. COLE.—I object to that as incompetent and immaterial.

Objection sustained.

Q. Now, going to the liquor known as Penwick Rye of 1904, you are acquainted with that brand of liquor, are you? A. Yes, sir.

Q. What would be the fair market price per gallon of that liquor in June, 1912?

A. I should judge that would be about seven or seven and a half dollars, about seven dollars; there is a year's difference.

Q. Now, the liquor known as the Green River variety of 1902 vintage which would be ten years old in 1912. What would be the fair market price per gallon of that liquor in June, of last year?

A. Of 1902?

(Testimony of William H. Armstrong.)

Q. Yes.

A. That would make it about ten years old.

Q. Yes.

A. I would call that whiskey in the spring of 1902 thirteen years old.

Q. What would be the fair market price per gallon?

A. Well, that whiskey ought to be worth about nine dollars a gallon. As I have said, a good deal is based on the supply and the source a man would buy it from.

Q. Now, what was the supply of that liquor?
[227]

A. I am not familiar with that.

Q. You say you have been in the liquor business some twenty years? A. Yes, sir.

Q. Is it anything unusual for a liquor dealer to have on hand to-day goods that he bought four or five or six years ago?

A. In my present occupation, I have been twelve years and I have, not a great deal, but I have different brands of liquors, bitters, and things like that, that were in the house when I came there. The demand, of course, changed.

Cross-examination.

(By Mr. COLE.)

Q. These prices that you gave, Mr. Armstrong, as six, eight and ten dollars a gallon, are retail prices where it is sold by the gallon over the bar?

A. Of course the original cost and the shrinkage and the freight and the storage.

(Testimony of William H. Armstrong.)

Q. A little profit figured in? A. Yes, sir.

Q. And these are retail prices as if you sold it off by the gallon?

A. Yes, that is—well, now, take the Old Crow Whiskey at that age. If a man came in and asked me for a gallon of that whiskey at that age, it ought to be worth \$10, because I doubt if a man could get any in the open market at that age.

Q. What you would charge him for it would depend more or less on your fancy?

A. I think it is, that value. [228]

Mr. COLE.—I move to strike out the witness' evidence as not competent.

The COURT.—The motion is denied and the objection overruled.

Exception allowed.

The COURT.—You ask a man to testify on a matter as to his opinion and it is apt to provoke an irrelevant answer.

Q. The prices you gave on these other goods were all retail prices? A. Per gallon.

Q. And the price of the liquor you think might be as high as \$10 a gallon? A. Yes, sir.

Q. And you figure that way on the retail prices too?

A. Now, if a man came in and bought by the glass—

Q. I mean where you are selling out of your saloon by the gallon instead of by the barrel.

A. Yes, sir, \$10 a gallon.

Mr. COLE.—I move that this testimony be

(Testimony of William H. Armstrong.)

stricken out, as incompetent.

The COURT.—Motion denied. You asked on cross-examination how much it could be sold for by the glass.

Mr. COLE.—Well, I did not think I asked him how much it was sold for. He testified that he sold some for twenty-five cents a glass out of the barrel.

Motion denied.

Q. You have never been in the wholesale business, have you? A. No, sir.

Q. And you are not familiar with the wholesale prices of the various liquors about which you have been asked here, in the month of June, 1912? [229]

A. Well, no, I could not testify in regard to the prices at that particular time.

Q. You could not state at what prices they could be bought in the market by the barrel at that particular time?

A. At that particular time, I do not remember.

Q. And that is true about all of the different liquors about which you have testified here, is it?

A. Well, the market price of liquors at that age.

Mr. COLE.—I move again that the testimony of this witness be stricken out because the plaintiff is not entitled to recover,—(interrupted).

The COURT.—Motion denied. The jury will understand that he is not necessarily entitled to recover the retail value of these liquors at the time and place where that fire took place but you are to consider the retail value in arriving at the market value of the goods—the entire market value of the

(Testimony of William H. Armstrong.)

entire stock of goods. There might not have been any wholesale market value of goods at this place. They may not have been selling liquors there at wholesale.

(Witness excused.) [230]

[**Testimony of W. A. Hagermeyer, for Plaintiff.**]

W. A. HAGERMEYER, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. State your name to the jury.

A. W. A. Hagermeyer.

Q. Your residence? A. Tacoma.

Q. What business are you engaged in?

A. Retail liquor business.

Q. You have bought and sold liquors, have you?

A. Sold.

Q. How long?

A. A little over—well, about three years.

Q. You are acquainted with the brand of whiskey known as the Old Crow brand, are you?

A. Yes, sir.

Q. And with that brand known as Penwick Rye?

A. Not so much acquainted with Penwick Rye as I am with Old Crow.

Q. Are you acquainted with Old Crow in a general way? A. Yes, in a general way.

Q. How did you arrive at that information?

A. Well, the same as I have with different brands

(Testimony of W. A. Hagermeyer.)

that are in the market.

Q. Are you acquainted with the brand known as Cedar Brook McBrayer's? A. Yes, sir.

Q. Now, I wish you would tell the jury what would be the fair market value per gallon of the brand of whiskey [231] known as—the fair market value per gallon of the whiskey known as the Old Crow brand 1906 vintage, double stamp?

A. Oh, I should judge it ought to be five or six dollars per gallon.

Q. What would be the fair market value of the Cedar Brook McBrayer 1903 vintage, double stamp?

A. Why, I should judge about six dollars, somewhere along in there.

Q. And the Green River double stamp 1902 vintage, ten and twelve years old?

A. Not less than seven dollars.

Q. Mr. Hagermeyer, in your business of liquor dealer, is it anything unusual for a person to have goods on hand at the present time that they bought two or three or four or five years ago?

A. I have some goods that were not bought by myself, but bought by my predecessor, wines and so on, that are over twelve years old.

Q. And you still have them on hand?

A. Yes, parts of them.

Cross-examination.

(By Mr. COLE.)

Q. These prices that you gave are prices where the liquor is sold by the gallon out of a retail store, are they?

(Testimony of W. A. Hagermeyer.)

A. Well, that would be pretty nearly what you would have to pay for this brand of goods at those ages.

Q. You are in the retail business? A. Yes, sir.

Q. Retail liquor business? [232]

A. Yes, sir.

Q. These figures you gave are those figures that you would sell this whiskey for by the gallon out of a retail store?

A. It would depend pretty nearly on what they had cost me.

Q. Do you know anything about the wholesale value of these liquors during June, 1912?

A. No, sir. I am not very well posted because I am not in the wholesale business. I do not know what the wholesalers have to pay for their goods.

Q. But these prices you mention would include the retailer's profit, at least some?

A. No, I would not think so.

Q. There would not be any profit in selling at that price? A. I hardly think so.

Q. Did you buy any of this kind of whiskey in 1912? A. In 1912?

Q. Yes.

A. No, but my partner bought some of those goods when I was in Olympia.

Q. Do you know what he paid for them?

A. Well, I cannot remember now.

Q. Did you buy any of these certain ages that he has mentioned? A. No, not myself personally, no.

Q. And you are not familiar then with the—for

(Testimony of W. A. Hagermeyer.)

what money these particular brands and ages could have been bought in the market for in June 1912?

A. In this way: My partner in 1912 bought all the liquor and I paid all the bills, wrote the checks out to pay for the invoices. [233]

Q. If a man was to buy a barrel of any of these different brands and ages of liquors mentioned in June, 1912, you could not tell what he had had to pay for it?

A. He would have to pay somewhere near I think those prices.

Q. That would be to buy it by the barrel?

A. Certainly.

Q. You did not buy any of those years?

A. Only in this way. I was in partnership and my partner did the buying and I paid the bills.

Q. He bought one of the brands you mentioned, that is all the experience you have had?

A. We do not all handle the same lines in bulk.

Q. What brands did your partner buy?

A. I think he bought Old Crow.

Q. Of what date?

A. I think the age you speak of.

Q. What is that? A. 1906.

Q. He bought some 1906 Old Crow, did he?

A. Yes, sir.

Q. Do you know what he paid for it?

A. As near as I can remember it was about five dollars, from five to six and a half dollars, on that line.

Q. You could not tell exactly?

(Testimony of W. A. Hagermeyer.)

A. I have not got the evidence here.

Q. Do you know where he bought it?

A. I think in San Francisco.

Q. What year did he buy it in?

A. Last year. [234]

Q. June of last year? A. I think so.

Mr. COLE.—I move that this witness' testimony be stricken out as incompetent.

The COURT.—Motion denied.

Exception allowed.

(Witness excused.) [235]

[Testimony of F. H. Canaris, for Plaintiff.]

F. H. CANARIS, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. What is your name? A. F. H. Canaris.

Q. Where do you reside?

A. Long Beach, Washington.

Q. How long have you resided there?

A. Thirty-three years.

Q. Is that all? A. That is all.

Q. What business were you engaged in down there? A. At the present time?

Q. Yes. A. Curio store.

Q. What business have you been engaged in in the past? A. Shall I tell you all of them?

Q. Just in a general way.

A. I was in the bath-house business and the hotel

(Testimony of F. H. Canaris.)

business, photograph business, and plumbing business,—(interrupted).

Q. That is enough. Are you acquainted with Mr. Black? A. You bet I am!

Q. How long have you known him?

A. I think it is about eighteen or twenty years.

Q. Were you acquainted with his saloon that was destroyed by fire in June of last year?

A. Yes, sir.

Q. Tell the jury, if you know, what kind of stock of goods he [236] had on hand in that store?

A. Well, I know that he had some pretty good whiskey. Of course, I did not buy it. It was only once in a while we would manage to get a drink of that, when a stranger came in for information, he would say, "Come on and let us have a drink—" (interrupted).

Q. I just want you to give in a general way what you know of his stock of goods, whether he had a large line of goods. A. Oh, yes, he had.

Q. Were you in the saloon shortly before the fire?

A. Yes, frequently.

Mr. COLE.—I object to that as leading.

The COURT.—Objection overruled. That is preliminary.

Q. Were you in the saloon shortly before the fire?

A. Yes, sir.

Q. When?

A. Well, I was in there pretty nearly every day, and sometimes more than once a day up to that time.

Q. Do you know where he kept his stock of barrel

(Testimony of F. H. Canaris.)

liquor in the saloon? A. Yes, sir.

Q. Where was that?

A. In the front room where the bar was. That is where the barrel goods was.

Q. How many barrels there?

A. I did not count them. I could not say,—some-where about eighteen or twenty.

Q. Are you acquainted in a general way about what he had in the way of case goods in the saloon?

[237] A. Yes, sir.

Q. Tell the jury about the extent of the case goods that you saw.

A. The case goods was in the other room. There was an open space in there; there was no door; it was just an open space; you could walk right in. I think you could drive an automobile in there if you wanted to, and there was stuff in there—(interrupted).

Q. I do not care anything about that. I want an idea of the case goods.

A. There is where the case goods was piled up. That is what I wanted to tell about.

Q. About how many cases?

A. I do not know. I did not count them.

Q. Give the jury an approximate idea if you can.

A. Well, not less than one hundred and fifty cases, I should not think there was.

Q. Do you know how many there is in a case?

A. No, sir; I do not. I suppose there was a dozen.

Q. Well, what do you know about the cigar stock that he had on hand?

A. I don't know much about that. I saw lots of

(Testimony of F. H. Canaris.)

cigar boxes there, but I did not smoke them.

Q. Was there any barrels on the floor besides those on the rack?

A. I saw two on the floor that had never been tapped and put on the rack at all. Never been rolled up.

Cross-examination.

(By Mr. COLE.)

Q. You did not count these cases at all, did you? [238] A. What is the question?

Q. This is just an estimate about the cases?

A. No, sir. I did not count them, had no occasion to.

Q. Stacked up to the ceiling, one row?

A. Piled up on top of each other.

Q. How many tiers along the wall?

A. Just piled up near to the ceiling or very near to the ceiling.

Q. On which side?

A. On the north side of the building.

Q. You think there was one hundred and fifty, do you?

A. I think there should be that many, anyway. I could not say exactly.

Q. There possibly might have been more than that? A. There might have been more.

Q. There might have been less, too?

A. If it had been somewhat less—I would not say. That is an estimate I made, but I should judge there would be that many anyway.

Q. Do you know whether there was anything in

(Testimony of F. H. Canaris.)

them or not? A. That I do not know.

Q. Do you know whether there was anything in the barrels?

A. Yes, I know there was something in the barrels.

Q. In all of them?

A. I do not know whether in all of them, but a good many of them.

Q. They were all tapped? A. No, sir.

Q. You did not see any that were not tapped?

A. There were some that had not been tapped at all. [239]

Q. Were they in the back room?

A. I do not remember. Some of them had no faucets in them.

Q. Most of them were tapped, anyway?

A. Most of them.

(Witness excused.) [240]

[Testimony of Theodore Jacobson, for Plaintiff.]

THEODORE JACOBSON, a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. What is your name?

A. Theodore Jacobson.

Q. Where do you live?

A. Long Beach, Washington.

Q. How long have you lived there?

A. Thirty years.

Q. What is your business or occupation down

(Testimony of Theodore Jacobson.)

there? A. Grocer.

Q. Do you know Mr. Black? A. I do.

Q. How long have you known him?

A. About fifteen years, I suppose. I could not say within a year, but I have known him, I think, ever since he came to the beach, or in that part of the country. I first met him when he was engineer on the Ilwaco Railway and Navigation Company.

Q. Were you ever in his place of business there?

A. I have been there.

Q. Were you ever in his place of business in 1912?

A. I was.

Q. Were you in there before the fire?

A. I was there the night of the fire. I guess I had about the last drink.

Q. Just state to the jury what you know in a general way about the stock of liquors that he kept there.

A. He had good liquors, and seemed to have lots of stock the [241] same as he had at Ilwaco, before he left Ilwaco.

Q. Where did he keep his stock of liquors, Mr. Jacobson, if you know?

A. Do you want me to describe it?

Q. Yes, briefly.

A. Suppose you entered there (indicating), that is where the door would be, and on the opposite side would be where the barrels were racked up. I never counted them, but I suppose there were, perhaps, about sixteen barrels racked up two tiers, and the night of the fire I know they were there and there was a couple or three barrels lying on the floor. I

(Testimony of Theodore Jacobson.)

remarked to the bartender why he didn't get them out of the way, that somebody would fall over them one of these times, something like that, and he had the case goods in the back.

Q. What do you know about the case goods?

A. I know that he had some there. I have seen him unload them. I did not stop to count them. I know they dragged in a lot of case goods.

Q. You frequently visited this store for the last two years?

A. Yes, when I wanted a good drink I generally went to Bill Black's.

Q. How about the extent of the stock of goods in June, 1912, compared with what it would be three or four years before? A. It looked the same to me.

Q. What do you know about his stock of cigars?

A. He had a good stock of cigars.

Q. How do you know that?

A. I was traveling for Campbell & Evans, the El Rayo cigar [242] people, and I sold Bill Black an order for a thousand cigars and I wanted him to buy more, but he said, "You notice I am all stocked up," and he had, I should judge, two or three or four hundred on hand. I know he had a large stock.

Q. When did you sell him cigars? A. In 1910.

Q. You know something about cigars, being in the cigar business?

A. Yes, I think I know something about what a cigar is.

Q. Well, now, did you and Mr. Black ever order cigars together? A. Yes, sir.

(Testimony of Theodore Jacobson.)

Q. Explain why that happened to come about.

A. The Hart Cigar Company told me they had orders for a thousand cigars, almost, from Bill Black, and he said it would be all right if Bill's came with those. I says, "Yes," and I delivered them to Black. I would have a little more cigars than Bill, because I handled quite a bit of cigars, and having fruit and other things coming together, there would be a saving on the freight bills.

Q. You would not state how many cigars he had in there at the time of the fire?

A. No, I would not. He had a good stock, and the quality was good.

Cross-examination.

(By Mr. COLE.)

Q. You gave your residence as Long Beach?

A. I do.

Q. You are in the grocery business? [243]

A. I have been.

Q. When did you quit the grocery business?

A. When did I quit the grocery business?

Q. Yes. A. Why, year before last.

Q. 1911? A. That would make it about right.

Q. You are a sort of private detective at this time?

A. Once in a great while.

Q. Isn't it a fact that your business the last two or three years has been that?

A. I sometimes make a living that way.

Q. Isn't your office in a saloon on Second Street in Portland?

A. There is a cigar store there. I stop in the

(Testimony of Theodore Jacobson.)

saloon—I do not take that—(interrupted).

Q. You claim Long Beach is your residence now?

A. I do. I vote there.

Q. Are you a married man? A. Yes, sir.

Q. Where is your wife living?

A. She is in Portland.

Q. How long has she lived in Portland?

A. Since we quit business at Long Beach this summer. I was there this summer.

Q. You say you sold cigars to Mr. Black in 1910?

A. Yes, I took an order from Bill Black.

Q. Campbell & Evans were out of business at that time?

A. They took in a partner. Mr. Evans is out of business now. [244]

Q. What was the price of these cigars, do you know?

A. \$90.00. I took the order. Whether or not they filled it, I could not say.

Q. How long has your headquarters been at that address in Portland?

A. It has been there, I think, about three years.

Q. You just use the back room of that saloon there for an office?

Mr. LANGHORNE.—I object to that as absolutely immaterial.

The COURT.—Objection sustained.

Q. You made application to the company's representatives, didn't you, shortly after this fire, to ferret it out, to the company, your services?

A. Cole & Cole?

(Testimony of Theodore Jacobson.)

Q. Yes.

A. I did to Mr. Chessman, yes, sir.

Q. You stated you thought this thing could be run down—(interrupted).

A. I did, to find the truth of it. You people failed to put up the money, and I could not go through with it.

(Witness excused.)

Plaintiff rests. [245]

[Motion for a Nonsuit, etc.]

Mr. COLE.—If the Court please, I move for a nonsuit at this time, and in connection with that I wish to call the Court's attention to these letters, as one of the grounds for the nonsuit, his refusal to furnish bills and invoices and certified copies.

Argument.

(Jury excused during the course of argument.)

The COURT.—(After argument.) In this matter, where the insurance company puts in the policy, "shall produce for examination all books of account, bills, invoices, and other vouchers or certified copies thereof, if originals be lost, at such reasonable place as may be designated by this company or its representatives, and shall permit extracts and copies thereof to be made," that must be construed strictly against the insurance company. It is such a general and loose provision that a man who had had a loss would not know how to go about complying with it. If he furnished a certified copy by the man who sold the bill, they might come back and say, "We meant somebody else," they might say, "We meant a certi-

ificate by the merchant.” The provision of the contract requiring that he produce these things is a wholesome provision and it is for the protection of the company, but when they have got a provision in there that he shall furnish them at some reasonable place, under the strict construction of the contract against the insurer, it is their duty to designate some reasonable place, and if they meant by this that he produce them in Portland, outside of the State of Washington, the Court would be prepared to hold that was an unreasonable place. [246] As I read this letter, your company had rejected his proof of loss, and told him that you would hold it subject to his order. As I read his letter, that is particularly what he is crying out against. He has done all in that matter that he will do, and when he says, “You have never called on me, and I have never saw you,” that left the matter open to your company, and warned you that if you required anything more of him or anything in the line of matters you spoke of, about bills or invoices, his idea was the reasonable place would be down there in that town where he lives and the Court thinks so, too. In matters of this kind, the Court has heretofore held that these provisions are for the protection of the insurance company, and it would be presumed that a refusal to comply with them would work to their prejudice, and the Court has just been reversed for so ruling. The Court of Appeals has held that under a policy which required notice to the company immediately or at most within ten days, that that would not simply be enforced, and that the burden was on the

company to show that they were prejudiced by that lapse. The motion will be denied.

Exception allowed.

Mr. COLE.—I did not quite finish my motion. I would like to state that the motion for a nonsuit is based on the refusal of the plaintiff to furnish the defendant with copies of his purchases and invoices and his refusal to perform any of the other conditions in the policy on his part to be performed; and for the further reason that the market value of the property has not been shown.

The COURT.—That is an amendment to your motion, or is it a [247] further motion?

Mr. COLE.—I wish to offer it as an amendment.

The COURT.—Motion denied.

Exception allowed.

And the defendant, to maintain the issues on its part, introduced the following evidence: [248]

[Testimony of W. G. Loyd, for Defendant.]

W. G. LOYD, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. W. G. Loyd.

Q. Where do you reside, Mr. Loyd?

A. Portland, Oregon.

Q. Did you have anything to do with the adjustment of the loss of William Black at Long Beach under the policy under consideration in this action?

A. Yes, sir, I did.

Q. You were acting as adjuster for the Central National Fire Insurance Company? A. Yes, sir.

(Testimony of W. G. Loyd.)

Q. How was this adjustment carried on by you with Mr. Black?

A. After I was requested to take the matter up by the company, I went to Long Beach, and I happened to have a copy of the daily report and the form from the general agents, and knowing that it was \$5,000 on stock and \$1,000 on the fixtures and \$2,000 on the building, I went to Long Beach to take up the matter of adjustment.

Q. Now, did you talk to him personally, Mr. Black, personally with Mr. Black while you were there?

A. No, sir, I did not.

Q. Your negotiations with him, then, were all carried on by correspondence? A. All at one time.

Q. I show you a copy of a letter to William Black at Long [249] Beach, Washington, dated August 20th, 1912, and ask you whether or not that is a copy of the letter which you wrote to him?

A. Yes, sir, I believe that to be a carbon copy of my letter to Mr. Black.

Q. Is that the first letter?

A. I think this is a copy of my first letter.

Q. I show you Defendant's Exhibit "C" and ask you whether or not that—(interrupted).

Mr. LANGHORNE.—These letters have all been admitted. The plaintiff admits that he wrote them.

The COURT.—I understand that they were offered at the time, but I noticed afterwards in Mr. Cole's offer he mentioned identification—(interrupted).

(Testimony of W. G. Loyd.)

Mr. LANGHORNE.—It is admitted that he wrote these letters.

Mr. COLE.—These particular letters were offered in evidence, but I wish to show that he carried on his adjustment wholly by these letters.

The COURT.—Very well.

Q. I will ask you whether that letter of Mr. Black's, dated August 23d, was in response to that (indicating)? A. Yes, sir.

Q. Can you tell when you commenced to write to him?

A. August 31st. That is a carbon copy of the letter of August 31st (indicating).

Q. That is Defendant's Exhibit "K." Did you get an answer to that? A. I believe I did.

Q. In order to hurry the matter, I will ask you if these letters, Defendant's Exhibits "F," "B," "E," "H," "D," "I," together [250] with your letter of September 1st, marked Defendant's Exhibit "L," constitutes the balance of your correspondence? A. Yes, sir.

Q. Did you have any further correspondence with the plaintiff subsequent to October 11th, 1912?

A. I think not.

Q. And his letter of October 11th, 1912, then was the last letter on the subject, was it?

A. I believe it was, yes, sir.

Q. Did you have any further negotiations with him between that time and the starting of this suit?

A. No, sir.

Q. On receipt of this letter, the matter was closed

(Testimony of W. G. Loyd.)

until the suit was filed? A. Yes, sir.

Q. Nothing further done? A. No, sir.

Q. And you first talked to him personally about it in January, 1913?

A. January, 1913, I think it was.

Q. Then the letters which have been introduced here as defendant's exhibits constitute the negotiations that you had with him by mail? A. Yes, sir.

Cross-examination.

(By Mr. LANGHORNE.)

Q. You had some conversation with him, you say, in January, 1913? A. Yes, sir.

Q. You asked him at that time to give you a written order on [251] the bank in Astoria so you could examine the condition of his bank account, did you not? A. Mr. Cole did. Mr. Cole was with me.

Q. This Mr. Cole?

A. No, sir, his brother. Mr. Black gave him that order.

Q. Mr. Black gave him that order?

A. Yes, gave it to Mr. Cole.

Q. He did not have any objection in giving it to you? A. I think not.

Q. And they also showed you a lot of old bills and invoices that were saved from the fire and were partially burned?

A. There were some bills and invoices, nothing material, that would have any bearing on the case at all.

Mr. LANGHORNE.—I move to have that stricken out.

(Testimony of W. G. Loyd.)

The COURT.—Motion granted.

Mr. LANGHORNE.—Please answer my question. He showed you a lot of bills and invoices of goods bought? A. Yes, sir.

Q. What did you do with them? A. Nothing.

Q. You didn't take them away with you?

A. No, sir.

Q. Did you examine them? A. Yes, sir.

Q. Didn't they relate to purchases made by him?

A. Very limited.

Q. To what extent?

A. I could not say to what extent.

Q. He told you that most of his bills and invoices had been destroyed in the fire, did he not? [252]

A. Yes, sir.

Q. You were the adjuster for the company during the year 1912, were you? A. Yes, sir.

Q. Why was it you did not go down there to the place where the fire occurred before you did?

A. I went down there soon after the fire. I think it was about two weeks.

Mr. COLE.—I object to that on the ground that it is incompetent.

Objection overruled.

Q. Did you see Mr. Black? A. No, sir.

Q. Where was he at the time?

A. I do not know.

Q. You did not look for him?

A. No, sir, I did not.

Q. Made no inquiries for him? A. No, sir.

(Testimony of W. G. Loyd.)

Redirect Examination.

(By Mr. COLE.)

Q. Mr. Black ever furnish you with any copies of his bills of purchase? A. Never did.

Q. No certified copies of any of his bills or invoices? A. No, sir. He made no attempt to.

Q. I will ask you whether or not he ever stated to you or told you that he was not able to furnish any copies?

A. He told me in a letter that he would not furnish them.

Q. Was it later than that? [253]

Mr. LANGHORNE.—That letter is in evidence. I object to this testimony as the letter speaks for itself.

Objection sustained.

Q. I will ask you whether or not he ever furnished you with any inventory or other paper required by the conditions of the policy?

Mr. LANGHORNE.—I object to that as calling for a conclusion in the mind of the witness.

Mr. COLE.—That is too general. I was in a hurry to get the matter disposed of when I asked the question.

(Witness excused.) [254]

[**Testimony of L. E. Loomis, for Defendant.**]

L. E. LOOMIS, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

(Testimony of L. E. Loomis.)

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. L. E. Loomis.

Q. Where do you live?

A. Ocean Park, Washington, Pacific County.

Q. How old are you, Mr. Loomis?

A. Thirty-six.

Q. What is your business?

A. Fire insurance.

Q. How far is your residence from Long Beach?

A. About ten miles.

Q. How long have you lived there at Ocean Park?

A. I have lived at Ocean Park almost three years.

Q. Are you acquainted with Mr. William Black?

A. Yes, sir.

Q. How long have you known him?

A. Well, ever since he has been at the Beach, probably fifteen years or more.

Q. Did you ever have any business dealings with him? A. Yes, sir.

Q. What were they?

A. I had various business dealings with him.

Q. Did you ever have any insurance business with him? A. Yes, sir.

Q. How much?

A. I think I had four thousand dollars' insurance with Mr. Black,—(interrupted). [255]

Mr. LANGHORNE.—I object to that as absolutely immaterial and incompetent.

The COURT.—Objection overruled. It is preliminary.

(Testimony of L. E. Loomis.)

Q. What property did that cover?

A. He had, I think, \$2,000 on the building and fixtures and \$2,000 on the stock.

Q. That was his saloon at Long Beach?

A. Yes, sir.

Q. When did that policy expire?

A. The last policy that I had expired on June 16th, I think, was the date of them.

Q. Did he keep them until that time?

A. No, sir. I received them from Mr. Black June 10th, I think, June the 8th or 10th, 1912, about six days before they expired.

Mr. LANGHORNE.—Did you have written communications?

A. He wrote me a letter—(interrupted).

Mr. LANGHORNE.—I object to any testimony concerning it unless the written communication is produced.

The COURT.—I do not understand that this question went to anything more than the time, if he had any recollection of the date, but as to the contents of the letter the objection will be sustained.

Q. How was this sent to you, by mail or otherwise?

A. By mail.

Q. Did you ever have a talk with Mr. Black during the month of May, 1912, in regard to increasing his insurance?

A. I do not remember positively the month. It may have been April or it might have been May, but he asked me what it would cost, what would be the rate on \$8,000 insurance. [256] He did not specify,

(Testimony of L. E. Loomis.)

however, any particular amount on the building or stock, I do not believe.

Q. Did you tell him what the rate was?

A. I told him it would cost \$210.

Q. Did you have any further conversation in regard to the stock?

A. I had no conversation with him at the time in regard to his stock, no more than he said that he was intending to increase his insurance.

Q. I will ask you whether or not he stated how much he wanted on the stock and how much on the building?

A. I do not remember. I could not say.

Q. How was this other \$4,000 divided up, did you say?

A. There was \$1,500 on the building; \$500 on the contents—that is on the stock—on the back bar and fixtures, and \$2,000 on the stock of wines and liquors and cigars.

Q. What did the fixtures consist of?

A. Bar, back bar, the fixtures if I remember rightly, including glassware and things movable and immovable in the building, chairs, etc.

Q. Did you ever have any conversation with him about disposing of the stock and getting out of the neighborhood?

A. Well, Mr. Black has said a number of times that his wife was opposed to his business and that he was going—and he would like to get out of the business, something of that kind, at different times, I do not remember just when this statement was made to me.

(Testimony of L. E. Loomis.)

Q. Did you have any of that kind of a conversation at or about the time of this insurance talk? [257]

A. What is that?

Q. Did you have any conversation at or about this time of the talk of getting the new policy?

A. I could not say, no, sir. I used to see Mr. Black quite often, every few days in fact.

Q. Did you have any conversation with him about his having to have the goods in case that he took \$5,000 insurance?

A. About having his stock insured for \$5,000?

Q. Yes.

A. No, sir. No, I could not say positively to that, I could not say.

Q. Did you have any conversation with him about this time in which, at the time that he applied for this insurance in which you stated you were from Missouri and that he would have to show you the stock?

Mr. LANGHORNE.—I object to that as leading and as putting answers in the witness' mouth.

Objection overruled.

Question read.

A. Why, he asked me if I would insure it for \$8,000, the stock and fixtures, and I told him that I would insure him providing he had the goods or the value there, that the companies were from Missouri and had to be shown, if he had the goods I would insure him for \$8,000, and he answered that he did not know just what he had, that he was selling all the time, and I told him it was time he was finding

(Testimony of L. E. Loomis.)

out; if he did not know what he had he had better find out. I do not believe I had any more conversation with him after that time.

Q. You think there was nothing said after that?
[258]

A. No, sir, I do not think I saw him after that time.

Q. The only business transaction you had after that was the receipt of your policy by mail?

A. Yes, I am sure. It was the 10th of June that I received the policy back. At least, the letter was mailed from Long Beach on the 10th of June.

Cross-examination.

(By Mr. LANGHORNE.)

Q. Mr. Loomis, if I understand you correctly, at the time he spoke to you about \$8,000 insurance, he never specified how he wanted it divided, did he?

A. No, sir, he did not say.

Q. How large a hotel building did he have?

A. Well, it was not a large building, probably fourteen or fifteen rooms upstairs, something like that.

Q. He said it was twenty-two rooms.

A. Well, it might be, I could not state positively. It might be.

Q. He had a warehouse also, did he not?

A. Yes, I think there was a couple of buildings that Mr. Black had goods stored in.

Q. He had a couple of buildings that he had goods stored in besides his saloon?

A. He might have—I never examined his goods or anything of that kind but I am pretty sure—one of

(Testimony of L. E. Loomis.)

them had been a barn where he kept a horse at one time.

Redirect Examination.

(By Mr. COLE.)

Q. This \$8,000 had something to do with the hotel?

A. No—(interrupted). [259]

Mr. LANGHORNE.—Just a minute. I object to that.

Objection sustained.

Q. What property did he want this \$8,000 on?

A. I understood him to say the saloon building and contents because I understood that he had the small building and the boarding-house or hotel insured, but I never insured it. He asked me what it would cost to insure it, the boarding-house, for \$3,000 about that time too.

Q. Did he give any reason why your policy was cancelled—was there any reason given to you?

A. In his letter?

Q. Yes.

A. He stated in that letter—(interrupted).

Mr. LANGHORNE.—Just a minute. I object to that.

Q. Have you got the letter?

A. No, I have not got it here.

Q. Do you know where it is?

A. I have it at my place.

Q. You have it on file, have you?

A. Yes, sir.

(Witness excused.) [260]

[**Testimony of F. A. Hazeltine, for Defendant.**]

F. A. HAZELTINE, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. F. A. Hazeltine.

Q. Where do you live, Mr. Hazeltine?

A. South Bend.

Q. What occupation are you in?

A. I am a country editor.

Q. Edit a newspaper? A. Yes, sir.

Q. How long have you lived in South Bend?

A. Twenty-two years.

Q. Do you know William Black? A. Yes, sir.

Q. How long have you known him?

A. Ever since he came to the country there, I think it must be some fifteen years, close to that.

Q. Did you ever know him anywhere else?

A. No, sir.

Q. Do you know what his general reputation is for character in Long Beach, in Pacific County? Just answer that yes or no.

Mr. LANGHORNE.—For what?

Mr. COLE.—General reputation for character.

Mr. LANGHORNE.—I object to that.

Objection sustained.

Mr. COLE.—That is the language in which the Supreme Court states a matter like that should be raised. I do not see what the objection could be.

(Testimony of F. A. Hazeltine.)

The COURT.—You are seeking to impeach a witness?

Mr. COLE.—Yes, sir.

The COURT.—As I understand it, the form of that question would be whether he was acquainted with his general reputation in the community in which he lives for truth and veracity.

Mr. COLE.—That is one form. I think the other is a form according to the Supreme Court of the State of Washington.

Objection sustained.

Q. Are you acquainted with the reputation of Mr. William Black in the community in which he lives for truth and veracity?

A. Yes—(interrupted).

Mr. LANGHORNE.—Just a minute. When?

The COURT.—Fix the time.

Q. During the past fifteen years since you have known him? A. Yes, sir.

Q. You may state then what it is.

A. Why, I regard it as very poor.

Mr. LANGHORNE.—For what?

A. For truth and veracity.

Q. Do you know what the general reputation of Henry Kayler is for truth and veracity in the community in which he lives? A. Yes, sir.

Q. How long have you known him?

A. I have known him for about twenty years.

Q. What is his general reputation for truth and veracity? A. It is not very good.

Q. Did you ever have any talk with Mr. Black con-

(Testimony of F. A. Hazeltine.)

cerning his [262] disposing of his stock of goods at Long Beach?

A. Why, I used to be quite friendly with Mr. Black; I am personally acquainted with him now, excepting his business; I have always opposed the business, and when he first went into the saloon business, why, I had a talk with him about it, he being a brother Mason, and he knew my sentiments towards the saloon business, and he assured me he was only in it because he had been caught with a mortgage on the stock and that he did not intend to stay in it. He remained in it, though,—that was in Ilwaco,—as long as he could get a license there, and then he moved to Long Beach,—(interrupted).

Mr. LANGHORNE.—I move to strike out that last part.

The COURT.—Motion granted. You are not answering the question.

Q. What, with reference to his disposing of the stock at Long Beach?

A. After he moved to Long Beach, he assured me there—(interrupted).

Mr. LANGHORNE.—I object to that as immaterial.

The COURT.—Objection overruled.

A. (Continuing.) That he intended to dispose of the stock as fast as he could, that he did not want to remain in the business and was simply getting rid of the stock that he had on hand.

Q. About when was that, did you say?

A. I should say that was about a year after he

(Testimony of F. A. Hazeltine.)

moved to Long Beach, about 1909. [263]

Cross-examination.

(By Mr. LANGHORNE.)

Q. You say you are friendly with Mr. Black?

A. Personally. I have nothing against him personally, simply do not like his business.

Q. Do you associate with him?

A. I did as long as he would allow me, but the last few years since I have been working for local option, he did not want to associate with me.

Q. You have local option fights in Pacific County whenever you fellows haven't anything else to do?

A. Yes, sir.

Q. And when there is nothing to do on that line you are indicting the legal fraternity?

A. Yes, and winning out, too.

Q. A busy community down there?

A. Yes, we have a good time there.

Q. In court most of the time. Are you friendly with a man you say whose reputation for truth and veracity is bad? A. Why, in a social way.

Q. Who did you ever hear say his reputation for truth and veracity was not good?

A. It is quite common talk there.

Q. Give us the name of someone.

A. Very well, there is N. R. Whitcomb.

Q. Who is he?

A. He lived in Ilwaco a long while, in fact his legal residence is still there. He is now the deputy county assessor.

Q. Is he a local optionist too? [264]

(Testimony of F. A. Hazeltine.)

A. I think he voted dry, yes.

Q. How far is South Bend from where you live,—from Long Beach?

A. About twenty-five miles, I should judge.

Q. How long are you over at Long Beach?

A. During the summer-time, especially; I am there on an average of at least once a month, oftener even than that; I circulate around the country pretty freely.

Q. Circulate around in support of the local option movement?

A. No, sir, newspaper. "South Bend Journal" and local option on the side.

Q. You have given the name of one man you have heard talk about the reputation of William Black for truth and veracity. What others?

A. E. A. Seaborg. He was born in Ilwaco, County Clerk.

Q. He is a local optionist?

A. I do not know how he did vote.

Q. He is doubtful then? A. Yes, sir.

Q. Who else did you hear speak about Mr. Black's reputation for truth and veracity?

A. I do not recall just now. I did not take a list of them down.

Q. You heard but two people speak about it and yet you can swear his reputation for truth and veracity in that community is bad?

A. Yes, sir. I did not take note of all the people who told me that.

Q. You would damn a man's reputation for truth

(Testimony of F. A. Hazeltine.)

and veracity before this jury because you have heard two men say it [265] was bad?

A. No, sir. General talk for years. I had no idea of being called as a witness and don't want to be a witness now.

Q. You did not miss the opportunity?

A. The gentleman with the gray suit pumped me before I knew what he was up to or he would not have had me here.

Q. You say Henry Kayler's reputation for truth and veracity is bad, too? A. Yes, sir.

Q. He is the fellow the insurance company appointed as agent at Long Beach? A. Yes, sir.

Q. You think they would appoint a man whose reputation for truth and veracity is bad?

A. I guess they did.

Q. You say you are friendly with Mr. Black?

A. Yes, due to a peculiar reason: I traveled in South America as newspaper correspondent years ago, and Mr. Black used to be a locomotive engineer, and he had been in places where I was and I used to drop into his saloon and we would swap yarns about South America and talk bad Spanish, and his wife could not talk any English, and I used to go over and talk to her because the poor woman could not hardly talk to anybody else but her husband.

Q. Did Mr. Black ever threaten you and your newspaper for a libel suit?

A. Never directly; I heard he was.

Q. You published an article that you had to admit was not [266] true?

(Testimony of F. A. Hazeltine.)

A. That he sold liquors to minors—(interrupted).

Q. I am not asking about that. I am asking you if you did not publish an article that he applied for a saloon license and could not get one and then you afterwards found out it was not true?

A. I have not found out that it was untrue.

(Witness excused.) [267]

[Testimony of Z. B. Brown, for Defendant.]

Z. B. BROWN, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. Z. B. Brown.

Q. Where do you live? A. South Bend.

Q. How long have you lived there?

A. I think I have lived in South Bend from sixteen to eighteen years, probably.

Q. Did you ever hold any official position there?

A. Yes, I am the County Assessor.

Q. Did you ever go over to Long Beach?

A. Yes, sir.

Q. How often?

A. Oh, well, three or four times a year, maybe more than that, sometimes.

Q. Did you ever go into Mr. William Black's saloon? A. Yes, sir.

Q. You know Mr. Black, do you? A. Yes, sir.

Q. How long have you known him?

A. Practically ever since he came into the country. He was an engineer on the road when I first knew him.

(Testimony of Z. B. Brown.)

Q. Did you ever have any talk with him about his stock of goods? A. Yes, I had a talk with him.

Q. When was the last conversation?

A. Well, it was in 1912. I could not tell the date. It was [268] in the assessing season, in March. I had a talk with him; after the deputy had assessed him I had a conversation with him.

Q. You had a conversation with him as to the amount of his stock?

A. Relative to his assessment.

Q. Did he state anything to you as to the value of the stock that he had on hand?

A. He gave me to understand that he gave him a fair assessment, that he didn't have much stock on hand at the time.

Q. Did you have any conversation with him about what he was going to do with his stock?

A. No, sir, I do not recall any conversation about what he was going to do with it.

Q. What, if any value did he place on his stock at that time?

A. Well, he had no value. I do not know that he placed any particular value to me at that time about his stock, only that he had the assessment at that time and we were talking about his assessment at that time.

Q. What was the assessment, do you remember?

Mr. LANGHORNE.—Did you make it?

A. No, sir, I did not make it myself. It was turned in to me by one of my deputies.

(Testimony of Z. B. Brown.)

Mr. LANGHORNE.—I object to that as incompetent.

The COURT.—Objection sustained.

Mr. COLE.—I wish to offer in evidence the certified copy of Mr. Black's detail list of personal property as assessed for the years 1912 and 1910.

Mr. LANGHORNE.—I object to that as not such an instrument as can be certified to under a law of this State— [269]

Mr. COLE.—The statute provides that any instrument in the custody of an official may be certified to and introduced in evidence.

The COURT.—Objection sustained.

Exception allowed.

Mr. COLE.—The statute on that is pretty broad. It states that any instrument in the custody of a public official—(interrupted).

The COURT.—That is the copy of the assessment at which his property was assessed?

Mr. COLE.—Yes. This is a detail list as signed and subscribed by him personally, and if I had Balingier's Code here I could call your Honor's attention to that statute. It is very broad. It says that a certified copy of any public record in the custody of any county, city or State official, may be introduced in evidence.

The COURT.—I will change the ruling, but I will instruct the jury at the same time that what property is assessed at is not evidence of value of the property. This jury is here to determine the reasonable cash market value of these goods, but, it is a mat-

(Testimony of Z. B. Brown.)

ter of such common knowledge that property is assessed below its valuation, and even where the property is assessed, and statements made by the owners of the property,—that it is not such a satisfactory evidence of value as to be followed.

Mr. COLE.—We do not contend it is conclusive. Our contention is that it is a circumstance. For instance, the assessor probably assessed personal property at a certain per cent,—I understand that in this year it was assessed at sixty per cent of its valuation. [270]

Whereupon said detail lists were admitted in evidence and marked Defendant's Exhibit "N" of this date.

Q. Now, I will ask you whether or not you went over this assessment with Mr. Black, and what, if any, conversation you had with him relative to running his stock down?

A. I did not go over the assessment with Mr. Black. I did not have the assessment when I was talking with Mr. Black at all. Mr. Black and I were friends and I think he opened up the conversation himself about the assessment, and we talked over the assessment in a general way.

Q. What, if anything, was said about the value of his property at that time?

A. He gave me to understand that he had given him a fair assessment, that his stock was low. They all do that too, as a general thing.

Q. Did you make any comparison between his stock of that year and previous years?

(Testimony of Z. B. Brown.)

A. No, sir, I did not that I know of.

Q. The only words used was that his stock was low at that time?

A. Yes; he showed me a barrel or two that didn't have much liquor in them, tipped one up and so on.

Q. How many did he call your attention to?

A. I do not know. He had a lot of barrels there and we talked in a general way and he gave me to understand that he had given in a fair assessment for the stock that he had.

Cross-examination.

(By Mr. LANGHORNE.)

Q. What basis did you assess personal property on in Pacific [271] County last year?

A. Sixty per cent.

Q. Sixty per cent of—(interrupted).

A. Sixty per cent of the full value.

Q. It says, "seventy per cent," what does that mean? A. That is 1910.

Q. I suppose this was last year's?

A. No, sir, that is 1912, that seventy per cent is the part of the sheet,—less forty per cent you see here (indicating), I took forty per cent off the total value.

Q. Less seventy per cent here (indicating)?

A. That is the 1910.

Q. And that you assessed at seventy per cent?

A. No, sir; in 1910 and 1911 it was assessed at thirty per cent and in 1912 it was assessed at sixty per cent.

Q. I believe you said everybody that had personal

(Testimony of Z. B. Brown.)

property assessed always thought that they gave it in pretty high? A. Yes, sir.

Q. Were you county assessor when they used to assess moneys and mortgages and credits?

A. I believe I was deputy assessor then.

Q. How much did you find in Pacific County then?

A. I remember finding \$103 once.

(Witness excused.)

[Assessment for 1912.]

Mr. COLE.—The 1912 assessment reads as follows: “Detail list of personal property of William Black of Pacific County, Washington. A schedule of the numbers and amount of all personal property in the possession or under the control of himself belonging to William Black on the first day of [272] March, 1912, listed by himself of the town of Long Beach, County of Pacific and State of Washington, as required by the General Revenue Law now in force in this state. Poultry, one dozen, \$5.00. Sewing-machines, 1, \$5.00. Household furniture, including clocks, rugs, gold and silver plate, paintings, statuary, engravings, etc., \$100.00. Office furniture, safes, typewriters, adding machines, cash registers, etc., \$50.00. Stock and furniture of sample-rooms, saloons, etc., \$600.00. Aggregate value of personal property as equalized by County Board, \$760.00. Aggregate value of exemptions under section 5 of Law, less forty per cent, \$304.00. Aggregate value of taxable property as equalized, \$456.00. Aggregate value of personal property as returned by the

assessor, exempt, \$300.00. Aggregate value, \$156.00. State of Washington, County of Pacific, ss. I, William Black, do solemnly swear that I am a resident of the County of Pacific; that I have read and know the contents of the within and foregoing detail lists, and the same contain full and correct statements of all property subject to taxation in this County, which I or any firm of which I am president, cashier, secretary, managing agent, owned, claimed, possessed or controlled on the first day of March, 1912, at 12 o'clock, meridian, and which is not already assessed for said year; and that I have not in any manner whatever transferred or disposed of any property or placed any property out of said County or my possession for the purpose of avoiding any assessment upon the same or of making this statement. (Signed) William Black, Residence Long Beach. Postoffice, Long Beach. [273] Subscribed and sworn to before me this 13th day of March, 1912. (Signed) Z. B. Brown, County Assessor by Wm. S. Shagren, Deputy." Now, here is a detail list of personal property for 1910 and it is in the same form as the other one. "One horse valued at \$25.00. One buggy at \$10.00. One piano at \$50.00, one sewing-machine, \$5.00, household furniture, \$100.00. Stock and furniture of sample-rooms, saloons, etc., \$1,410.00. Aggregate value of personal property as returned by Assessor, \$1600.00, less seventy per cent, \$910.00. Aggregate value of personal property assessed, \$1300.00. Aggregate value of exceptions under Sec. 5 of law, \$300.00. Aggregate value of personal property assessed for taxation, \$390.00. And

it is subscribed and sworn to in the same manner as the other one, on the 20th day of March, 1910, H. A. Peeples, County assessor by Theo Jacobson, Deputy." That was the 20th day of March, 1910, and the other was the 13th day of March, 1912, one being for \$600 on the stock and furniture of sample-rooms, etc., and for 1910 it was \$1,410. [274]

[**Testimony of William S. Shagren, for Defendant.**]

WILLIAM S. SHAGREN, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name?

A. William S. Shagren.

Q. Where do you live?

A. Nahcotta, Washington.

Q. How long have you lived there?

A. Thirty-three years.

Q. What if any position do you hold at the present time?

A. I do not hold any at the present time, but I have been deputy assessor for the last five years.

Q. Were you the deputy assessor in 1912?

A. Yes, sir.

Q. Do you know Mr. William Black?

A. Yes, sir.

Q. Did you assess his property during 1912, or the spring of 1912? A. Yes, sir.

Q. You made the assessment here that is on this exhibit for the year 1912, did you? I show you De-

(Testimony of William S. Shagren.)

defendant's Exhibit "N," detail tax statements for 1910 and 1912, attached together. The first one is for 1912. I will ask you whether or not you are the one who made that assessment?

A. Yes, I made that assessment.

Q. Where were you at the time you assessed that property? A. In the saloon.

Q. At Long Beach? [275] A. Yes, sir.

Q. Was Mr. Black there? A. Yes, sir.

Q. What, if any, conversation did you have with him about his stock at that time?

A. Well, I told him I wanted a fair valuation for what he had.

Q. What did he say?

A. Well, we went around and he tapped the barrels for me.

Q. What did he say about the amount that he had—of the amount in the barrels?

A. Well, he said at that time that he was afraid that this place was going dry and he was letting his stock run down.

Q. What did he use in tapping the barrels, if anything?

A. I did not notice what he had in his hand at the time.

Q. What was his object in tapping the barrels?

A. I suppose to see how much liquor was in them. That was the only object in view.

Q. How did you arrive at the assessment of \$600?

A. After we went around and looked over the stock, and I do not know whether it was he that stated

(Testimony of William S. Shagren.)

that, I am pretty sure that he did, and we both agreed that would be a fair value.

Q. What did that include besides the liquors and cigars on hand, if you know?

A. That would be where it says, "Stock" on the list.

Q. That included the furniture in the saloon?

A. No, sir, I think the furniture comes in under a different heading. [276]

Q. The list says stock and furniture of sample-rooms, saloons, etc. A. That reads that way there?

Q. Yes.

A. And cash register and one thing and another—(interrupted).

Q. Yes, the cash register and safe were assessed at \$50. A. Yes, sir.

Q. Did that include the bar?

A. I suppose it would, yes, sir.

Q. And that conversation was on the 13th of March, the date that these affidavits are given there (indicating)?

A. Whenever the assessment was taken, yes, sir.

Q. What did you notice with reference to the barrels of liquor in the front room at that time as to their condition, as to being full or otherwise?

A. Well, I have not had much experience in tapping barrels, but—(interrupted).

Q. Do you know how a barrel sounds when it is full and how it sounds when it is empty?

A. Yes, sir. I do not think there were many of

(Testimony of William S. Shagren.)

them that were full. In fact, most of them sounded hollow to me.

Q. What did you say was the conversation in regard to local option?

A. He said he was afraid that the town was going dry.

Q. Was that given as a reason for running the stock down? A. I suppose it was, yes.

Q. Did you have any conversation as to what percentage of assessment was being made at that year?

A. I do not remember as to that.

Q. What percentage were you making assessments as to that [277] year? A. Sixty per cent.

Q. Do you know what Mr. Black's reputation, generally, for truth and veracity is down there in the neighborhood in which he lives?

A. Well, I do not know much about that only what I have heard and I do not go much on hearsay. I had very little business with him himself.

Q. Could you state you are familiar with it as it stands in the community? A. How is that?

Q. Could you state you are familiar within, enough, to know what it was?

A. Well, only from what I have heard.

Q. How extensively have you heard,—to what extent in regard to being general or just to a small extent?

A. Well, I don't know exactly how—(interrupted).

The COURT.—You were not asked to tell what you have heard but whether you have heard enough

(Testimony of William S. Shagren.)

so that you feel you know what his general reputation for truth and veracity is in the community in which he lives?

A. Well, as to that, I will say that it is not very good.

The COURT.—You were not asked that.

Mr. COLE.—This is preliminary. You may answer as to whether you know what it is. Do you think you do? A. Yes, sir.

Q. What is it then?

A. Well, not very good. [278]

Cross-examination.

(By Mr. LANGHORNE.)

Q. What is his reputation for square dealing down there with his brother men?

A. I do not know. I never had much dealing with the man.

Q. What is his reputation for square dealing?

Mr. COLE.—I object to that as not proper cross-examination.

Objection overruled.

A. I could not say as to that.

Q. What is his reputation for honesty?

A. Well, I could not say anything as to that.

Q. Did you ever hear anything against it, against his honesty? A. Well,—no.

Q. You have got two bitter factions down there at Long Beach, have you not?

A. Well, I do not know. I do not live there.

Q. Where do you live? A. Nahcotta.

Q. How far is that from Long Beach?

(Testimony of William S. Shagren.)

A. About ten or twelve miles.

Q. You know perfectly well they have two bitter factions at Long Beach?

A. They may have—(interrupted).

Q. You know that from general reputation and hearsay, don't you?

A. Yes, I guess—(interrupted).

Q. Who are these men who talk about Mr. Black? They are not his friends, are they?

A. I would not say they were.

Q. Who did you ever hear say that his reputation for truth and [279] veracity is not good?

A. I do not know as I can recall anyone. It is in a general way.

Q. How long have you been deputy assessor?

A. Three years.

Q. You generally find that as the assessment time rolls around, you find their stock greatly shrunken?

A. They all put up a pretty stiff talk, yes, but I always try to get all I can get.

Q. How far is Long Beach from South Bend?

A. Oh, it is about forty miles.

(Witness excused.)

Recess. [280]

[Testimony of F. X. Marks, for Defendant.]

F. X. MARKS, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. F. X. Marks.

(Testimony of F. X. Marks.)

Q. Where do you live?

A. Long Beach, Washington.

Q. How long have you lived there?

A. About eight years.

Q. Are you acquainted with Mr. William Black?

A. Somewhat, yes.

Q. What if any position, official position, have you held down there?

A. I served as justice one term, deputy sheriff another term and—that is all.

Q. How old are you, Mr. Marks?

A. Sixty-two.

Q. Now, are you familiar, with the general reputation for truth and veracity of William Black in that community? A. Well, I have got my opinion.

Mr. LANGHORNE.—I move to strike that out.

Motion granted.

Q. Just answer the question yes or no. Answer yes or no whether or not you know what it is.

A. Well, in a way, yes, sir.

Q. Do you know what it is around among the people in general? Answer yes or no.

A. I think I do, reasoning from the petition that was circulated and signed against him. [281]

Q. Now, what is his reputation for truth and veracity as to being good or bad?

A. That is a kind of a delicate question. He is given a good deal to—(interrupted).

The COURT.—It can be answered. The question is whether it is good or bad, if you know. Answer it, say so, if you know, if you do not know, say so.

(Testimony of F. X. Marks.)

A. Well, I do not think it is very good.

Q. Do you know who circulated that remonstrance against his license being renewed?

A. I think Mrs. Papa.

Mr. COLE.—I wish to offer this remonstrance in evidence.

Mr. LANGHORNE.—I object to that as absolutely immaterial and incompetent and irrelevant and as having no bearing on the case.

The COURT.—For what purpose do you offer it, Mr. Cole?

Mr. COLE.—It is for the purpose of showing the motive.

The COURT.—Objection sustained. It has been shown that there was a remonstrance and that he knew of it.

Q. Do you know Henry Kayler, Mr. Marks?

A. Yes, sir.

Q. How long have you known Henry Kayler?

A. Oh, seven or eight years.

Q. I will ask you if you know what Henry Kayler's reputation is for truth and veracity in that community? A. I do not think it is very high.

Q. Answer yes or no if you know what it is.

A. Well, I will answer yes, that is, I think I do.

Q. Having answered yes, you may state what his reputation for truth and veracity is? [282]

A. Not very good.

Q. Do you happen to know anything about the amount of stock Mr. Black had at the time of the fire? A. No, sir.

(Testimony of F. X. Marks.)

Q. You are not familiar with that?

A. No, sir.

Q. When was the last time you were in his saloon?

A. That is a long time ago. It must be, oh, probably a year or more before the fire.

Q. You were not in his saloon just prior to the fire?

A. No, sir.

Cross-examination.

(By Mr. LANGHORNE.)

Q. Were you born in the United States?

A. Yes, sir.

Q. Did you ever leave the United States?

A. Yes, sir.

Q. You have taken the oath of allegiance in another country? A. Yes, sir.

Q. What country? A. Canada.

Q. And then came back to the United States.

A. Yes, sir.

Q. How long have you been down at Long Beach?

A. I think it was eight or nine years last February.

Q. What have you been doing down there the last three or four years? A. Mill work principally.

Q. What kind of mill work?

A. Setting boilers. [283]

Q. Do you know what reputation consists of?

A. I do, yes.

Q. What is it?

A. The proof of the pudding is in the eating of it if that will do for an answer.

Q. Do you know what reputation consists of? Do you know how a man's reputation is made or

(Testimony of F. X. Marks.)

ruined? A. Yes, sir.

Q. You are not friendly with Mr. Black?

A. Not particularly unfriendly. We had a little bit of trouble but I do not,—(interrupted).

Q. Are you a local optionist?

A. Well—not exactly.

Q. Who did you ever hear say Mr. Black's reputation for truth and veracity was not good?

A. Well, himself, listening to his narratives.

Q. Anybody else?

A. Oh—possibly—yes, that petition was considerable evidence to satisfy me.

Q. Do you mean to say that a petition circulated and asking the county commissioners not to grant a saloon license for a man is evidence of his reputation for truth and veracity?

A. When it belongs to a certain individual I certainly do.

Q. Answer the question, do you believe because—(interrupted).

A. Yes, I do.

Q. You believe that the fact that if people sign a petition against a man, asking the county commissioners not to grant him a saloon license, that would be evidence that the man did not have a good reputation for truth and [284] veracity?

A. If you did not sign it for that reason I would not think much of your judgment.

Q. Suppose I signed it for the reason that I did not want a saloon in the community, and that I did not have anything against the man himself. Suppose

(Testimony of F. X. Marks.)

some of the signors did not know the man at all but were opposed to liquor on general principles, do you think that would be evidence against the man's general reputation for truth and veracity?

A. Not necessarily.

Q. How is it that you form your opinion that Mr. Black did not have a good reputation for truth and veracity—is it because somebody signed a petition against his running a saloon?

A. Well, I had a little reason aside from that.

Q. If somebody down at Long Beach don't act as you do, you say he has not a good reputation—that is it, is it not? A. No, sir.

Q. You are not friendly with Mr. Henry Kayler, are you? A. I could not say that I am very.

Redirect Examination.

(By Mr. COLE.)

Q. Did you help circulate this petition? Did you take any part in circulating the petition?

A. I think I took part in circulating a remonstrance against his appointment as postmaster at one time.

Q. Who was that against?

A. Against his appointment as postmaster.

Q. Against who? [285] A. Henry Kayler.

Q. I had reference to the petition here. Did you help circulate the petition against Mr. Black?

A. No, sir.

Q. You were asked on cross-examination about going over to Canada. What was the object of that trip?

(Testimony of F. X. Marks.)

Mr. LANGHORNE.—I object to that as immaterial.

No ruling by the Court.

A. Simply to make a living and get land for my boys.

Q. Did you take out your papers when you came back?

A. I took up my—made my declaration just twenty-six hours after I acquired citizenship in Canada. Just as soon as I got across the line, I was compelled to acquire citizenship in Canada in order to make final proof on the homestead.

Q. As soon as you came back here you took out your papers? A. Yes, at Blackfoot, Idaho.

Q. (By Mr. LANGHORNE.) Then your only object in declaring yourself to be a citizen of Canada was to acquire a hundred and sixty acres of land?

A. Certainly.

Q. (By Mr. COLE.) Did you ever serve in the army for the United States Government?

A. I did. I have been scout on different occasions, for the Fifth Cavalry, well in '80 and '81 and in '68 also.

Q. What wars were those?

A. Indian scraps, all of them.

(Witness excused.) [286]

Mr. COLE.—I wish to read the deposition of Mr. Peter Stoller.

The COURT.—Taken under stipulation?

Mr. COLE.—Yes.

The COURT.—Proceed.

[**Deposition of Peter Stoller.**]

Mr. COLE.—(Reading:)

“Q. Where do you live, Mr. Stoller?

A. I live at Long Beach, Washington.

Q. How old are you?

A. Fifty years—very near fifty-one.

Q. What is your occupation?

A. Well, at the present time, farming.

Q. And you are now on your way to The Dalles?

A. Yes, sir.

Q. And you speak of going to The Dalles to-night, do you?

A. No, not until Monday now, on account of the train.

Q. How long have you lived at Long Beach?

A. A little over five years.

Q. Are you acquainted with William Black?

A. Yes, sir.

Q. How long have you known Mr. Black?

A. I have known him a little over five years, also. I got acquainted with him, one among the first in the country.

Q. Are you familiar with Black's saloon at Long Beach, Washington, prior to the time it burned?

A. When it burned?

Q. Yes. A. I know the location of it.

Q. Have you ever been in his saloon?

A. Yes, sir.

Q. Now, how long prior to the fire were you in there?

A. I was there about at least four months before

(Deposition of Peter Stoller.)

he was burned, not since then.

Q. I will ask you whether or not you noticed his stock of liquors when you were in there.

A. I bought liquor there time and again; I also drank over the bar.

Q. What kind of liquor did you buy from him?

A. I bought one gallon of wine to my knowledge, Port wine, and I bought to my certain knowledge, I bought three bottles at different times—that is one at a time—of Old Crow whiskey, and [287] I bought one bottle of Green River Whiskey.

Q. Where was this Old Crow taken?

A. Taken from?

Q. Yes. A. Out of a barrel.

Q. Where was the Green River taken from?

A. Out of a barrel, right out of a faucet.

Q. I will ask you whether or not Mr. Black sold much liquor out of a barrel?

A. All that I ever bought of him was out of a barrel.

Q. And do you know how long he had the Old Crow there?

A. He had some there the year before he burned up, and the year after that, 1911 and 1912—that is the same year he burned up you might say, that would be in 1911, he had one barrel of extra good liquor to my knowledge. I don't know whether he had any more or not but he told me of one barrel that was extra good. In fact, it was good for he sold some of it for twenty-five cents a drink and he asked as high as \$2 a bottle for the liquor.

(Deposition of Peter Stoller.)

Mr. BRUMBACH.—I would like you to qualify the size of the bottle.

A. Ordinary quart bottle, he might have made a little reduction to an old settler.

Q. How many barrels did Mr. Black have in his saloon—of liquor; how many barrels of liquor did he have in his saloon?

A. I could not tell you exactly how many, I know there was quite a number there, there must have been eight or ten at least in the bottom tier and about six or eight in the top tier.

Q. What was the condition of those barrels as to their being full or tapped?

A. I could not say.

Q. I will ask you whether or not they had any faucets in them.

A. I could not speak there was faucets in all of them, but there were faucets in most of them.

Q. And about when was this that you saw that number of barrels in his [288] saloon?

A. That was right up to the time I left, that was in January last, about 1911, I think.

Q. January, 1912, wouldn't it be?

A. 1911 or 12—it was about four months prior to the time he was burned up, I could not tell exactly.

Q. I will ask you whether or not he had any whiskey that he sold cheaper than the price you have mentioned.

A. Well I am not a man to drink poor liquor, I don't drink much liquor and a bottle always done me never less than two weeks and sometimes two months.

(Deposition of Peter Stoller.)

Q. Did he have any cheaper liquor to your knowledge?

A. He told me one time that he had some liquor he sold for a dollar a bottle.

Q. I will ask you, Mr. Stoller, whether or not you are familiar with the general reputation of William Black in that community at Long Beach, Washington, for character.

Mr. BRUMBACH.—I am going to interpose an objection there; objected to by plaintiff for the reason that it does not specify what kind of character.”

Mr. LANGHORNE.—I insist upon the objection.

The COURT.—On account of this being a deposition—you say you had a ruling from the Supreme Court—(interrupted).

Mr. COLE.—Yes, I have the citation here.

The COURT.—You may pass that but hand up your authority to me later. I will not permit the answer to go in. I want to read your authority first.

Mr. COLE.—I will pass up the questions with regard to reputation for character beginning with (reading):

“Q. Do you know what his reputation is for truth and veracity?

Mr. BRUMBACH.—Same objection.”

The COURT.—Read the question. [289]

(Question read by Mr. Cole.)

The COURT.—That should be general reputation, but that may be preliminary. The objection will be overruled.

Mr. COLE.—(Reading:)

(Deposition of Peter Stoller.)

“A. I have never had much dealings with him in that line.

Q. Do you know what his reputation is among the people there for truth and veracity?

Mr. BRUMBACH.—Same objection.”

The COURT.—Objection overruled.

Mr. COLE.—(Reading:)

“A. I could not swear to that, I could only say what I would do personally.

Q. Do you know how the people there regard him in regard to truth and veracity?

Mr. BRUMBACH.—Same objection.”

Mr. LANGHORNE.—We insist upon that because the witness already said that he did not know.

The COURT.—That is asking the question if he knows?

Mr. COLE.—Yes.

The COURT.—Objection overruled.

Mr. COLE.—(Reading:)

“A. I have heard a great many of them say that they would not believe him on oath.

Q. I will ask you then whether or not that is the reputation there for truth and veracity?

A. Among a great many of them it is.

Q. Are you familiar with what the reputation of Henry Kayler is for character in Long Beach, Washington; you may just state whether you know or not?”

That is with reference to character, so I will pass that the same as the other. There is cross-examination.

Mr. LANGHORNE.—We will waive the reading of the cross-examination.

Mr. COLE.—I would like to have the cross-examination go in. [290]

Mr. LANGHORNE.—If you want to read it, all right.

Mr. COLE.—There is some testimony in regard to Frank Canarias that has been brought out. Shall I read the cross-examination relative to the character of these two people? I think I might as well pass up all of this cross-examination until to-morrow, and, if it is agreeable to the Court, we will allow that matter to go over until morning.

The COURT.—Very well. [291]

Mr. COLE.—I wish to offer in evidence the deposition of Charles Orr, taken pursuant to stipulation. It was taken at the same time as the deposition of Peter Stoller.

The COURT.—It may be admitted.

[Deposition of Charles Orr.]

Mr. COLE.—(Reading:)

“Q. Your name is Charley Orr? A. Yes, sir.

Q. Where do you live?

A. Here at Kennedy station.

Q. Is that in Portland?

A. It is about nine miles from Portland. That is where I am staying now, the address is Lents, R. R. I, Box 273-D.

Q. Did you ever live in Long Beach, Washington?

A. Yes, lived at Long Beach for nearly nine years, close to nine.

(Deposition of Charles Orr.)

Q. How old are you, Mr. Orr? A. Eighteen.

Q. When did you leave Long Beach?

A. Last June, sometime, I don't remember what date.

Q. June, 1913?

A. No, 1912. Well, we left the beach the night before the saloon burned; we were here in Portland the night the saloon burned; I remember that night.

Q. And how long prior to that time did you say you lived in Long Beach?

A. We lived there about nine years.

Q. Now, did you ever have any conversation with William Black of Long Beach, Washington, regarding any reports that his enemies were threatening to burn his saloon?

A. No, sir; the only thing was, I was talking to a woman up there—

Q. Wait just a minute, I was asking you if you had any conversation about it? A. No.

Q. Now, did Mr. Black ever have any—I will ask you whether or not Mr. Black ever spoke to you about any threats to burn his saloon? A. Yes.

Q. When was this?

A. Well, that there was in—just before he got in trouble and went away, that [292] is when it was.

Q. And about what year and month was that?

A. It was in the spring, I think it was May, but I ain't sure.

Q. May of what year?

A. May, 1912.

(Deposition of Charles Orr.)

Q. What was that conversation?

A. Well, he just asked me if I had heard anyone say that he was going to burn his saloon, I said 'No'; he said, 'If you do, come and let me know, and I will make it right with you.'

Q. I will ask you whether or not you ever told Mr. Black that you had heard of any threats to burn his property. A. No."

Mr. BRUMBACH.—(Reading cross-examination:)

"Q. Where did you live prior to leaving the vicinity of Long Beach? How far did you live from Long Beach, Washington, before you left there?

A. Four and a half miles, that is what they always call it. I don't know whether it was exactly that, but that is what they always called it, four and a half miles.

Q. How often were you at Long Beach from the place you lived?

A. Well, sometimes it was two or three weeks I wasn't down there, and other days would be down there nearly every day.

Q. Where was this conversation had with Black that you mentioned?

A. When he asked me that?

Q. Where was it?

A. Well, I was going past there one time and he came out and asked me if I had ever heard anybody speaking of burning his saloon.

Q. Did you know Kerlee's store in Long Beach?

A. Yes.

Q. Did you, during that time, know the lady that

(Deposition of Charles Orr.)

was clerking in the store; I can't call her name?

A. I knew the lady, but I don't know her name, and would not know it if I heard it.

Q. You would not know it?

A. No, I would not know it if I heard it. [293]

Q. Did you have a conversation during Black's absence mentioned, wherein you stated that Canarias' bath-house had been burned, and that William Black's place would be the next place to burn?

A. Never said anything about Canarias, but we were talking there in the store one day and I said, 'Now, everybody is against Black, and the saloon is likely to burn, isn't it?' That was all I said.

Q. To this lady? A. Yes.

Q. Isn't it a fact that that is all the conversation you had with anyone at Long Beach concerning Black's place being burned?

A. Yes. It was the only one I said anything about it.

Q. At the time you mentioned that you had this talk with Black who else was present?

A. There was somebody, but I don't know who it was. There was another fellow and I walking on the railroad track there, but I don't remember who it was or anything about it.

Q. What is your exact age?

A. I was eighteen years the 4th of July.

Q. What year?

A. What year I was born, let's see, 1895.

Q. 4th of July, this year?

A. Yes, I am eighteen this year, the 4th of July.

(Deposition of Charles Orr.)

Q. 1913? A. Yes.

Q. Were you acquainted with a man living near Long Beach by the name of F. X. Marks?

A. Yes.

Q. Did you ever have any conversation with Marks about Black's affairs in any form?

A. Liquor was all.

Q. How?

A. I say, about the liquor, knew he sold some soda water and stuff there to me, and, of course, Marks he came and wrote that down.

Q. Were you in Black's place of business?

A. On business, yes.

Q. Black's place of business, his saloon?

A. Yes, I have been there.

Q. Were you not ordered out by Black by reason of your [294] being a minor, in the presence of Henry Kayler? A. No, sir.

Q. Were you ever at his place of business, more than once? A. I was there twice.

Q. Did you ever get any liquor in his saloon?

A. Yes, but not for myself. I got it for another fellow; I got it for a man by the name of Jensen that worked for Gus Smith.

Q. A man by the name of Jensen?

A. He is in Astoria now, at least, I guess he is.

Q. He sent by you for it? A. Yes.

Q. Was Jensen a man over twenty-one years of age? A. About sixty-five or seventy.

Q. Isn't it a fact that F. X. Marks was a bitter enemy of Black's, and induced you to testify that

(Deposition of Charles Orr.)

you had drank liquor in his place?

A. Yes, he had me to testify I did, yes. That he was an enemy of Black, I don't know. He wrote down, I forget how many certain numbers of soda-water I had, he wrote that down—Marks he was going to use when they had the trial there, he was going to have me come as a witness, but he didn't for some cause or another.

Q. Didn't Marks interview you and request you to come back from the State of Oregon where you were about to remove and testify against Black?

A. Well, I thought he was going to get me back.

Q. I asked you if he didn't ask you to, request you?

A. No, he didn't; I don't remember; I don't think, though, he did, but I don't remember.

Q. Didn't Marks tell you that if you would come back from Crook County, Oregon, and testify against Black in a case where he was accused of selling liquor to minors, that you would get your mileage from Crook County, Oregon, to South Bend, Washington, and that it would be enough for you to have a good time?

A. Never said about a good time. [295]

Q. Did he not tell you you would collect mileage?

A. Yes, he told me I would collect mileage from where I went to, but he didn't say they would from up there nor he didn't say anything about—

Q. From Oregon?

A. He didn't say, but when I left I gave him my address; I suppose that is where he meant, but he didn't say from there, or he didn't say no certain

(Deposition of Charles Orr.)

place at all, he just said it will be mileage.

Q. Did you ever have a drink of intoxicating liquors in Black's saloon? A. No, sir.

Q. Did you ever represent to Black that you were over twenty-one years of age?

A. No, never spoke about my age.

Q. Did any of your companions with you there, represent that you were all twenty-one?

A. No. Well, I will tell you now, there was Christianson and Gus Smith in there, and Christianson said to Gus, he said, 'Now, he has no business in here.' Gus said, 'I know he ain't,' but he said, 'That is nothing to me.'

Q. Who said that?

A. Gus Smith. Christianson said, 'He has no business in here,' and Gus said, 'I know he hasn't, but it ain't nothing to me.'

Q. And you positively swear Black never ordered you out of that saloon in the presence of Henry Kayler?

A. Yes, sir; I was never inside the saloon when Henry Kayler was there.

Q. Do you know of boys that were your associates representing to Black that they were of age?

A. No, I never heard one say that they were of age."

Mr. COLE.—These are the redirect. (Reading:)

"Q. You stated that you had a conversation with this woman that Black's place would be the next one to go. Will you state what, if any, reason you had to make such a remark? [296]

(Deposition of Charles Orr.)

A. No, I didn't say that.

Q. What did you say?

A. We were just talking in there and I said, 'Well, Black's saloon is likely to burn, isn't it,' and she said, 'Yes.'

Q. Did you have any reason for stating that to her?

A. No, we were just talking among ourselves.

Q. How did you happen to state it?

A. I don't know, just got to talking about different things, I knew everybody was against Black on the Beach, that is how I came to say it, I guess.

Q. Did you have any other reason for saying it?

A. No, I never had a thing against Black or nothing in that way.

Q. Have you ever heard any threats by anybody about burning his saloon?

A. No, that there woman went over and told Black and Black says, 'Well, if you hear anybody talk about it let me know and I will make it right with you.' I told you that over there the other day, didn't I?

Q. Now, how many times did you say you went in Black's saloon? A. Twice.

Q. What was the occasion for your going in?

A. Well, one time I went in to get a note cashed, written out by Henry Kayler.

Q. How much was it? A. \$50.

Q. Did Black cash it? A. No.

Q. What was the occasion for your going in the other time?

A. Well, Smith and I was—we loaned our horses

(Testimony of Charles Orr.)

to some fellows there, rented them to them, and they said they would be there, they would bring them back there, and we went there; I stood outside there quite a while and monkeyed around town and then I went over there.

(Signed) CHARLES ORR." [297]

[Testimony of Matt Phetana, for Defendant.]

MATT PHETANA, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. Matt Phetana.

Q. Where do you live, Mr. Phetana?

A. In Ilwaco.

Q. You live in Ilwaco, Washington?

A. Yes, sir.

Q. How long have you lived there?

A. Well, I have been in Ilwaco since '87, I came there.

Q. Since '87? A. Yes, sir.

Q. What business are you in?

A. Well, I have been doing a little of everything, but I am a carpenter.

Q. At the present time?

A. I have been doing fishing and a little carpentering.

Q. What kind of business are you now in?

A. In the carpenter business.

Q. Where are you working? A. Fort Camby.

Q. That is on the Columbia River? A. Yes, sir.

(Testimony of Matt Phetana.)

Q. Where were you working in June, 1912?

A. I was working at Ilwaco at Mr. McGowan's cannery.

Q. Is that on the Columbia River?

A. Yes, right in the town of Ilwaco.

Q. You said you were working there during the month of June? [298]

A. Yes, I worked there in Mr. McGowan's cannery.

Q. Did you ever see Mr. Black there towards the latter part of June?

A. Yes, one evening, I saw him.

Mr. LANGHORNE.—Where was that?

Q. Where did you see him? A. In the sawmill.

Q. Is that where you were at the time?

A. No, sir; I did not work in the sawmill, but I saw him at the time I took some lumber out.

Q. Where was he coming from?

A. I could not tell you.

Q. Did you talk to him?

A. Well, I talked to him. He said, "Good evening, how do you do," etc.

Q. About what time of the day was this?

A. That was after we quit work up at the cannery.

Q. Do you know about what time?

A. After five. We quit at five o'clock.

Q. How long after that was it?

A. Well, you see, I went into the house and had a cup of coffee and went after some lumber out there.

Q. Was it dusk yet?

A. No, sir; it was just before dark.

(Testimony of Matt Phetana.)

Q. Do you know what day it was?

A. It was St. John's Day. In the Finn language, we always celebrated that day; it was St. John's day, in the evening.

Q. Can you state about what day of the week it was?

A. I cannot remember because—(interrupted.)

[299]

Q. Was it Friday? A. No, sir.

Q. Saturday?

A. No, sir. It is supposed to be the first of the week.

Q. The first of the week, was it? A. Yes, sir.

Q. You know it was after Sunday, do you?

A. Yes, it was after Sunday. It was not Sunday because we do not work on Sunday.

Q. Was it between Sunday and Thursday?

A. I cannot remember.

Q. It was not in the latter part of the week, was it?

A. It was in the first part of the week.

Q. You stated that it was the first part of the week. Where was he going? A. Bill?

Q. Yes, where was he going?

A. He was talking with Charley Rogers. I do not know anything about his—(interrupted).

Q. What did he say?

A. He was talking about some business you know, to put up a store or something. I do not remember just what they were talking about, one thing and another. Charley is a business man—(interrupted).

Q. Did you go up the main street?

(Testimony of Matt Phetana.)

A. No, sir, I walked home, and he said, "I got some business," and he followed right behind me and I thought—I was living a little ways from the mill, and he was going over there and he had a grip in his hand and of course I did not recognize him until he said "Hello." [300]

Q. Do you know where he came from?

A. No, sir. He said he was going to Portland, Oregon or Astoria, or somewheres.

Q. What did he have in his hand, did you say?

A. A little hand grip, you know, suitcase.

Q. In what direction did he go?

A. In what direction?

Q. Yes.

A. Well, he was—it seems to me that he came from the dock somewhere over there. Of course I was busy. I did not take notice which way he did come from. He came right along there when I was coming with the lumber, you know.

Q. Do you know about what day in June it was?

A. St. John's Day in June.

Q. Is that in the neighborhood of the 24th or the 25th?

A. Something like that. It is the same day of the month as Christmas, excepting in leap years. It is our holiday, you know, it is St. John's Day.

Mr. LANGHORNE.—No cross-examination. I do not know what it is all about.

(Witness excused.) [301]

[**Testimony of E. F. Woods, for Defendant.**]

E. F. WOODS, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. E. F. Woods.

Q. Where do you reside? A. Ilwaco.

Q. Do you hold any position down there?

A. City Marshal.

Q. How long have you lived there?

A. Fourteen years.

Q. Do you know William Black? A. I do.

Q. Were you present at the fire? A. I was not.

Q. When did you first hear about it?

A. The deputy prosecuting attorney called me up I presume about daylight that morning.

Q. That was Mr. Wright?

A. That was Mr. Wright and I went out immediately.

Q. You went down there, did you?

A. Yes, sir.

Q. What did you find?

A. Well, the building was totally destroyed when I got there, still smoking; of course, it was hot, and of course I went to look for evidence to see if I could find anything for the cause of the fire, and the first thing that I got was the locks off the building and I kept them ever since. [302]

Q. Have you got them here? A. Here, yes, sir.

Q. Will you produce them?

A. They are in charge of the clerk.

(Testimony of E. F. Woods.)

Q. Now, you were acquainted with Mr. Black when he lived in Ilwaco? A. I was.

Q. And you knew him when he lived there, did you? A. I did.

Q. Do you remember when he moved his stock of goods over to Long Beach?

A. I remember the time, yes, sir.

Q. Did you see him in Ilwaco any time during the latter part of June, around about the fire at any time? A. I did not.

Q. I will ask you if you know whether or not, if you are familiar with his general reputation for truth and veracity. A. I am.

Q. Is it good or bad? A. Not very good.

Q. And are you familiar with the general reputation of Henry Kayler for truth and veracity?

A. No, sir. I *could say* as I am. You see he lives at Long Beach and I am at Ilwaco. While I was deputy sheriff I was out there but I had no business with him at all. It would be hearsay and of course those things are not reliable.

Q. Did you have any talk with Mr. Black about his stock within a reasonable time prior to the fire?

[303]

A. No, sir, I do not believe I did. I think I was in there the Saturday night before the fire. I would not know—only in a general way, talking to him. Of course when I sold out the Long Beach place at the sheriff's sale, he bought that in, and he was talking about stock then and one thing and another; that is all I remember about it.

(Testimony of E. F. Woods.)

Q. You sold him the Nye property?

A. Yes. The Smith property—the old Nye property, yes.

Cross-examination.

(By Mr. LANGHORNE.)

Q. You were acquainted with the stock of goods while he ran a saloon at Ilwaco?

A. In a general way, yes.

Q. Well, testify now in a general way what the character and extent the stock of goods he had there was.

A. Well, the amount of it was—I could not say. I am no judge of the price of liquor.

Q. What was the reputation of the saloon for carrying a fine line of goods?

A. The reputation was that it was the best on the peninsula.

Q. The best that could be bought? A. Yes, sir.

Q. Were you in his saloon at Long Beach?

A. Yes, sir.

Q. How did his stock there in the saloon at Long Beach compare with what he had in Ilwaco?

A. Well, I should judge it was increased some.

Q. You executed that bill of sale? A. Yes, sir.

[304]

Q. He bought that stock of goods, wines and liquors at the sheriff's sale in 1911? A. Yes, sir.

Q. Instead of decreasing his stock in 1911 he was increasing it, wasn't he? A. Yes, to that extent.

Q. Well, now, that stock of goods brought \$350 at the sheriff's sale? A. Yes, sir.

(Testimony of E. F. Woods.)

Q. Do you know anything about the value of those kinds of goods?

A. Well, I took a list of them from the bills I could find there in the place, the best I could do, and it listed up something I should judge about four hundred or four hundred and fifty dollars.

Mr. LANGHORNE.—I will offer in evidence this bill of sale on cross-examination.

No objections.

The COURT.—It may be admitted.

Whereupon said document was admitted in evidence and marked Plaintiff's Exhibit 6 of this date.

Q. September 30th, 1911, at the time he bought the goods, that was about the close of the summer season, wasn't it? A. Yes, sir.

Redirect Examination.

(By Mr. COLE.)

Q. What is this lock?

A. This is the lock off of the back door,—the bartender told me that he had—(interrupted).

Mr. LANGHORNE.—Just a minute. I object to that. [305]

Objection sustained.

Q. As far as the bartender is concerned, leave that part of it out.

A. This is the lock on the side door, side entrance of the building.

Q. Was it in this condition at the time you found it?

A. That was the condition it was in when I found it. This is the spring lock that was on the back door

(Testimony of E. F. Woods.)

leading out under the stairs.

Q. Was it in that condition when you found it?

A. Yes. And this was the lock that you found laying in the same place that that was. I presume it was also a back door; it might have been one of the doors upstairs, I would not be positive about that. And here is the lock off the front door in the same condition in which it was found, and this was the padlock off the front door. The front door also had a padlock along with the regular door lock (indicating all along).

Mr. COLE.—I would like to offer these in evidence if the Court please.

Mr. LANGHORNE.—No objections.

The COURT.—They may be admitted.

Whereupon said locks were admitted in evidence and marked Defendant's Exhibit "O" of this date.

Q. Have they been in your possession ever since you took them out of the ruins? A. They have.

Q. What do the locks indicate as to the doors having been locked at the time of the fire?

Mr. LANGHORNE.—I object to that as calling for a conclusion. [306]

The COURT.—Objection sustained unless it show that as a matter of expert knowledge, that he is an expert.

Mr. COLE.—I do not think it is a matter of expert knowledge. I think it is a matter anybody could determine.

The COURT.—Objection sustained.

Q. You took these to Ilwaco the day of the fire?

(Testimony of E. F. Woods.)

A. The day of the fire, yes, sir.

Recross-examination.

(By Mr. LANGHORNE.)

Q. You got there after the building was totally burned, did you?

A. Yes, still smoking, still hot.

Q. A good many people around there?

A. Well, there was not very many there at that time, not more than what would naturally gather at a fire.

Q. What time in the morning was the fire,—what time did you get there?

A. I do not know as to that. I suppose about five o'clock.

Q. How many people had been in the burning building before you got there,—do you know?

A. Nobody, because it was too hot, there were no tracks.

Q. You were not there when it was burned?

A. No, but nobody could have been there. I would have seen the tracks in the hot ashes.

Q. I am talking about the building when it was burned.

A. I do not know how many people went into the building or whether anybody went into it or not.

Q. You do not know whether anybody went through those doors just after the building took fire or not, do you? [307] A. No, sir.

(Witness excused.)

Mr. HAZELTINE.—Your Honor, may I have the

privilege of qualifying my statement while on the stand awhile ago?

The COURT.—That is between the parties, between counsel.

No objections.

Mr. Hazeltine took the witness-stand.

Mr. HAZELTINE.—On further thought, when I stated that Mr. Seaborg and Mr.—the other man, referred to Mr. Black's reputation for truth and veracity, it was more of his general reputation. I did not wish to quote them as referring specifically—(interrupted).

Mr. LANGHORNE.—I object to this stump speech.

The WITNESS.—(Continuing.) To truth and veracity.

Mr. COLE.—Wait a minute, Mr. Hazeltine.

The COURT.—The witness has finished. [308]

[Testimony of J. G. Wray, for Defendant.]

J. G. WRAY, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. J. G. Wray.

Q. Where do you reside?

A. Long Beach, Washington.

Q. What is your occupation?

A. Contractor and builder.

Q. Carpentering? A. Yes, sir.

Q. As such, did you ever do any building?

(Testimony of J. G. Wray.)

A. Yes, sir.

Q. How long have you lived in Long Beach?

A. I have lived there now about nineteen or twenty years.

Q. Do you know William Black? A. I do.

Q. How long have you known him?

A. I have known Mr. Black about twelve or fourteen years, something like that I think.

Q. Now, are you familiar with his saloon building?

A. Well, yes, I am quite familiar with it.

Q. Do you know what property is worth down there? A. In what respect?

Q. Buildings located in Long Beach?

A. Building locations?

Q. Buildings. Are you familiar with the values of real estate there, buildings?

A. Well, it depends on the location. [309]

Q. Did you have anything to do with the construction of his bar fixtures? A. I did.

Q. Are you familiar with the value of them?

A. Yes, sir, I am.

Q. What were they reasonably worth?

Mr. LANGHORNE.—I object to that as absolutely immaterial. Bar fixtures are not involved in this case.

The COURT.—Objection overruled. Gentlemen of the jury, you will understand that the plaintiff has not,—is not suing for the value of the bar fixtures, and that the defendant has accused him of burning his own building down including this stock, and causing it to be burned, and any evidence regarding a mo-

(Testimony of J. G. Wray.)

tive or purpose to be gained by burning it down, the defendant can put that in, and if his evidence shows that or witnesses show that, you may consider it for that purpose.

Question read.

Q. Go ahead and answer.

A. That is the bar fixtures?

Q. The bar fixtures, yes, sir.

A. What would you term the bar fixtures?

Q. The bar. You built a part of it?

A. I built what they term the front bar, or counter, and back bar.

Q. Are you familiar with the value of all this?

A. Yes, sir, I am.

Q. About what is the reasonable value of them?

A. Complete?

Q. Yes, complete. [310]

A. Well, I should say \$200 or \$250.

Q. Do you know what the reasonable value of that saloon building was?

Mr. LANGHORNE.—I object to that.

The COURT.—The objection is overruled. It is admitted for the same purpose and none other.

A. The real value?

Q. Yes, the reasonable value of the building.

A. Well, I think it could be contracted for in the neighborhood of \$2,000.

Mr. LANGHORNE.—How much?

A. \$2,000.

Q. \$2,000? A. The building itself.

Q. Are you familiar with the general reputation of

(Testimony of J. G. Wray.)

Mr. Black for truth and veracity in that community?

A. Well, yes.

Q. How is it? What is it?

A. As far as truth and veracity, I do not know as I ever heard anybody say with reference to truth and veracity, it is the general talk, not good, that is all.

Mr. LANGHORNE.—I move that that be stricken out and the jury instructed to disregard it.

The COURT.—The objection is overruled, and motion denied. He has not said what it was. He said it was not about truth and veracity but it was general talk, so he has not said it was good or bad.

Answer read.

Mr. LANGHORNE.—I move that it be stricken out.

The COURT.—Motion granted. I did not hear the last part [311] of the answer.

Mr. COLE.—What do you mean as to his reputation as to truth and veracity?

A. General neighborhood talk.

Q. What would you say as to whether he is good or bad?

A. Well, some says he is good and some says he is bad.

Q. Do you know what the prevailing opinion is, general sentiment?

A. I think the prevailing would be bad.

Cross-examination.

(By Mr. LANGHORNE.)

Q. There are two pretty bitter factions in Long Beach, is there? A. Well, yes, I think there is.

(Testimony of J. G. Wray.)

Q. Mr. Black belongs to one and you belong to the other?

A. Yes, he belongs to one side and I belong to the other.

Redirect Examination.

(By Mr. COLE.)

Q. Mr. Black belongs to one faction and the rest of the people belong to the other?

A. I could not say whether all of the rest of them belong to the other side or not.

(Witness excused.)

Whereupon the further hearing of this cause was adjourned until Oct. 23, 1913, 10:00 A. M. [312]

After adjournment and after the jury had left the courtroom, the following testimony was taken under stipulation of counsel, its admissibility to be ruled upon later by the Court.

[**Testimony of J. G. Wray (Recalled).**]

J. G. WRAY, previously sworn.

Mr. COLE.—Do you know, Mr. Wray, the general reputation of Mr. Black as to character in the community in which he lives at Long Beach?

Mr. LANGHORNE.—I object to that as immaterial and irrelevant and incompetent.

A. His general reputation for character is not good. That is what I hear—(interrupted).

Mr. LANGHORNE.—I move to strike out the answer for the reason before given.

[Testimony of F. A. Hazeltine (Recalled).]

F. A. HAZELTINE, previously sworn.

Mr. COLE.—I will ask you, Mr. Hazeltine, if you know what the general reputation of Mr. William Black is for character in Long Beach, where he lives, in that community?

A. Yes, and furthermore I know his reputation for truth and veracity,—

Mr. LANGHORNE.—Now, never mind that. Answer the question.

Mr. COLE.—State what his general reputation for character is in that community.

Mr. LANGHORNE.—I object to that as immaterial and irrelevant.

A. It is poor. [313]

[Proceedings Had October 23, 1913, 10 A. M.]

October 23d, 1913, 10:00 A. M.

Mr. COLE.—I would like to take up now the question of the admissibility of the evidence in regard to reputation for truth and veracity.

The COURT.—Proceed.

Argument.

The COURT.—(After argument.) The objection will be sustained. That first decision you read, the matter of women who are accused of being prostitutes, the decision points out that is an exception. It has never been held that the same rule should apply to a man. That is, the Court says a woman who has become a prostitute has necessarily lost all her other good qualities before becoming a prostitute, including her ability or inclination to tell the truth.

She must necessarily be false to others when she is so false to herself as to become a prostitute. You ask what a man's general character is. The Courts hold that it is too broad a question; that is, a man may have a reputation for violence, that would be perfectly proper, if he were accused of murder, when he would not tell a lie. As far as honesty is concerned, and reputation for truth and veracity, you can go that far, but when you ask as to a man's general character, that might include his being a violent man, shooting game out of season or selling liquor to minors, or many other things that do not affect him as to truth telling or a lying man. That is the ground on which the Court has sustained the objection, is that it is too broad.

Mr. COLE.—Our contention is that it is the same as a woman [314] having a bad reputation for character as a man having a bad reputation for character in other lines, it might affect his character.

The COURT.—It might and it might not and you would get something before the jury that would have no place there.

Mr. COLE.—This deposition we took of Mr. Peter Stoller, from the Court's ruling, everything may be admitted but what was objected to on the ground at the time. I think that was the ruling on the other deposition.

The COURT.—I will rule on it when I get to it. I do not want to undertake to rule generally in advance.

[**Deposition of Peter Stoller—Cross-examination,
etc.**]

Mr. COLE.—This is the cross-examination of Mr. Peter Stoller. The cross-examination starts out with regard to Frank Canaras. He had been asked in regard to the character and reputation of Frank Canaras on direct examination, and then he was cross-examined in regard to it. The first question is (reading), “Q. How long have you known Frank Canaras.” This is cross-examination.

Mr. LANGHORNE.—That is all immaterial. They attempted in their direct examination of this witness, and they also attempted to impeach the character of Frank Canaras by another one of our witnesses, went on a wholesale expedition of impeaching witnesses, and the Court has ruled on that, and that cross-examination is directed to it. If he reads this cross-examination, it will obviate the Court’s ruling.

The COURT.—I will overrule the objection. I think, it being your cross-examination, he may read it.

Mr. COLE.—(Reading:)

“A. I have known him about as long as,—very nearly as long as—well, at least five years.

Q. This [315] suit that you allude to in your testimony was one that you brought concerning the title to some land there, was it not? A. Yes.

Q. Your testimony then as in regard to Mr. Canarias is based upon his testifying for your opponent in that suit? A. Yes.

(Deposition of Peter Stoller.)

Q. Outside of this who have you heard at Long Beach making any statement against Mr. Canarias' character?

A. I don't like to give anybody away, but Mrs. Baker told me something of older days that Mr. Canarias wasn't the best in the world.

Q. Anybody else?

A. Not that I know of at present.

Q. Mr. Canarias is now holding a public official position there, is he not?

A. Well, he was during the beach season; I don't know whether he is at present or not. He was during the beach season constable or marshal or something like that, during the beach season.

Q. You mean he was deputy sheriff of the county?

A. I don't know whether he was or not, I saw he wore a star.

Q. I think you will see deputy sheriff. Is Long Beach an incorporated town? A. No, sir.

Q. Do they have any authorized officer in town known as a marshal? A. I don't know.

Q. Referring to Henry Kayler and his reputation, what do you mean in what respect it is not the best?

A. In the first place, he took insurance for Bill Black and Bill Black himself told me—Bill Black himself told me that he had accepted the money from Bill Black and kept it and never turned it over to the insurance company.

Q. Do you know whether it was ever paid or not?

A. I could not say, could not swear to that.

Q. When you speak of the reputation of William

(Deposition of Peter Stoller.)

Black, in what respect do you mean [316] that it is not the best?

A. From the general feeling of the people.

Q. From what?

A. From the general feeling and speaking of the people.

Q. Do you mean that his character—in his character he was of a quarrelsome disposition?

A. In one way he was. He got into a fight with John McKee not more than three weeks ago, might be a month ago.

Q. Do you know the merits or demerits of those quarrels he has had there? Do you know whether he was right or the other is right; do you know personally? A. I could not tell which is right.

Q. Did you ever hear the people generally state anything regarding Bill Black's character for truth and veracity?

A. I heard several of them say, 'I would not believe him on oath.'

Q. You evade my question, I say generally.

A. Well, that is what I mean, generally, people.

Q. Generally means all the people or a majority of them. A. Yes.

Q. Have you ever heard a majority of them?

A. Well, several have said they would not believe him on oath; I don't know how many.

Q. Can you name any persons that have made such statements to you? Tell me who they are, the names if you can; if you can't, why, say so.

A. Mr. Marks is one of them, he said that Mr.

(Deposition of Peter Stoller.)

Black stole a keg of nails from him.

Q. That keg of nails would be shown on the other shoe; never mind about that; go on.

A. Mr. Day is another one, Mr. Evan Day.

Q. Who is he?

A. He left this country now, left about two years ago.

Q. Is it not a fact that Marks was a bitter enemy of Black's over a transaction of Black having given him money to ferret out certain wrongdoings in the illegal sale of liquor at Long Beach and that Marks afterwards sought in [317] every way to get Black prosecuted; now isn't that a fact?

A. I know nothing of the trouble that occurred between the two parties, but I know this much that they are enemies.

Q. Didn't Marks tell you repeatedly, and others within your hearing, that he was going to break up Bill Black or do him up in business there?

A. Not to my knowledge. He said this much; he said, 'I am going to get even with him for stealing that keg of nails,' that is one thing I heard.

Q. Then he evidenced that he was a bitter enemy of Black's? A. Yes.

Q. How long have you known Marks?

A. I have only known him probably a little over two years.

Q. Do you know whether he is a citizen of the United States or not? A. I do not.

Q. Did he ever hold the office of justice of the peace while you resided there?

(Deposition of Peter Stoller.)

A. Not to my knowledge.

Q. Did he ever vote at any election since you have resided there? A. I never saw him vote.

Q. Speaking of the character of Henry Kayler in what respect do you allude to its being not the best prior to the time that the town went dry?

A. In the first place his reputation regarding that paying the insurance fees over to the company, that wasn't the best, and the next place he neglected his family by drinking.

Q. In this lawsuit that you referred to heretofore in your evidence, you were the plaintiff and one H. H. Tinker was the defendant?

A. Smith was the plaintiff, I was waiting for a quiet title.

Q. Weren't you and Smith joined as plaintiffs?

A. In one way we were, indirectly, in that he was to clear the title before he could get the balance of the money.

Q. Were you not seeking to acquire the title of the land [318] in controversy in that suit?

A. Yes, sir.

Q. Wasn't H. H. Tinker the defendant?

A. Yes, sir.

Q. Isn't H. H. Tinker the father in law of Henry Kayler? A. Yes, sir.

Q. Didn't Henry Kayler and Tinker both testify against your interests in that suit?

A. They might have testified to a certain extent against my interests; a little bit, wasn't as much as Mr. Canarias.

(Deposition of Peter Stoller.)

Q. You from said testimony haven't felt very friendly toward either Canarias or Kayler, isn't that true?

A. No, Mr. Kayler and I have no hard feelings on that proposition at all, nor Mr. Canarias and I have no hard feelings on that proposition, but that forms general opinion in me what people will testify to. I have known Mr. Tinker and he and I are warm friends at the present and so are Mr. Kayler and I.

Q. Have you ever heard anyone say anything against the character of Henry Kayler regarding his truth and veracity, particular under oath?

A. Well, in the Black case that came off last spring—

Q. Well now, yes or no, the answer to that?

A. It wasn't good.

Q. Kayler's wasn't good?

A. Yes, wasn't considered good, outside of business. In business why Kayler's truth and veracity was all right.

Q. Mr. Stoller, when I asked the question about truth and veracity do you know it, or have you ever heard, the answer is always yes or no, if you have heard of it or—

A. That goes under different heads.

Q. No, it don't, that is the answer to the question.

A. I am willing to answer if I understand it right.

Q. (Read as follows:) Have you ever heard anyone say anything against the character of Henry Kayler regarding his truth and veracity, [319] particularly under oath?

(Deposition of Peter Stoller.)

A. I could not tell you exactly who said it, but they said they could not trust him under oath. I know I could trust Mr. Kayler in a business dealing especially now, but whether I could trust him under oath in a witness, I don't know.

Q. I didn't ask about your opinion, I am asking whether people talk to you.

A. I can't say much about that.

Q. In the case against Black that you allude to, what case was that? A. What?

Q. (Question read.)

A. That is selling liquors to minors.

Q. Were you a witness in that case? A. I was.

Q. Did you hear the testimony of the minor boys that he was charged with selling liquor to?

A. I heard some of it.

Q. Is it not a fact that said minor boys testified in that case that at the time they obtained liquor from Black they had made statements that they were over twenty-one years of age?

A. Not to my knowledge, I know that Black knew my boy was only—he was only sixteen at the time he sold him liquor.

Q. Never mind about that, I am asking—did you hear those boys testify to that?

A. I heard some of the testimony, I heard some testimony.

Q. Didn't some of the boys state that they had represented they were over twenty-one?

A. I didn't hear them.

Q. You didn't hear them? A. No.

(Deposition of Peter Stoller.)

Q. Is it not a fact that at the trial of said case the evidence showed that the boys had represented they were twenty-one or over? A. I didn't hear that.

Q. I know it was. That is all. I don't care, as far as that. Did you and William Black ever have any dispute over any business matter? A. Yes.

Q. You say then you were familiar with Black's saloon? A. Yes. [320]

Q. You were also familiar with various other saloons, were you not? A. Well, I knew Mr. Nye.

Q. You knew of Mr. Nye's being sold out under attachment? A. I knew he sold out.

Q. Do you know who bought the stock in?

A. I am not sure, no.

Q. What kind of a stock did Black have compared with other saloons?

A. What liquor I got from Mr. Black was good.

Q. You don't get my point. What kind of stock, I mean, in size? A. Oh, how much there?

Q. Yes.

A. I saw a lot of barrels there, but I don't know what was in them.

Q. From the appearance of the saloon was it not a much larger stock than any ordinary saloon carried?

A. It was a wholesale house, he had a wholesale liquor and retail liquor license.

Q. You know that?

A. Yes, that is what he told me, he said he had wholesale liquors.

Q. Did you ever see any such license there?

A. No, I could not swear to that.

(Deposition of Peter Stoller.)

Q. When you got liquors from him, they were always of the best and highest grade, were they not?

A. I ordered the best.

Q. Did you ever count the number of barrels and cases? A. No, I did not.

Q. Did you ever see some barrels lying on the floor in the back part, that were not upon the rack?

A. At one time I saw to my knowledge, two barrels there.

Mr. COLE.—You mean in the back room, Mr. Brumbach?

Mr. BRUMBACH.—No, in the back part under the doorway.

A. The back part.

Mr. COLE.—The back room?

A. Yes, the back room.

Mr. BRUMBACH.—There are three, not the extreme back room.

A. I could not say what was in them, I saw the barrels.

Q. Did you ever count the number of barrels that were on the racks?

A. No, my judgment only is that there might have been something [321] between eight or ten on the bottom tier and about six or eight on the top tier; might have been a little more, a little less, I never counted them.

Q. Did you ever count the number of case liquors that he had?

A. I never bought any cased liquor there or ever counted any boxes or cases.

(Deposition of Peter Stoller.)

Q. Wasn't there a large number of boxes piled up in the back room of cased goods?

A. Not that I saw, there was a few but not many.

Q. You never saw in the back room, extreme back room?

A. Yes, I was in the extreme back room, side room, I was in there too.

Q. You aren't very friendly with Black now, are you, have no dealings?

A. Well, I would be friendly if he would speak, but the trouble we have had, there is no hard feelings so far as I am concerned.

Q. Were you ever residing there in the vicinity of Long Beach when Henry Kayler was Justice of the Peace?

A. I really don't know when he was justice of the peace; I could not tell that.

Redirect Examination.

Q. What was this business trouble you said you had with William Black?

A. I took a wood contract for my minor son, from him, words; and he told me that I should go and cut wood off of lot 9 which he claimed a half interest in and when it came to the time that I should cut the wood, in fact I took the contract for my son, not for me, but when it came to fulfill the contract I wanted writings from him to give me a legal right to cut wood on that land since I found out the land wasn't paid for yet, and I thought that it was safer for me to have writings, and when I demanded the writings he refused to give them to me and I told him the deal

(Deposition of Peter Stoller.)

was off and he asked me to take a drink with him [322] and I refused the drink, and since then I haven't been in his house, any more, but we had no words at all, that is, of hard feelings.

Q. Did you ever have any other trouble with him?

A. No, sir.

Q. Do you hold anything against him on account of that business transaction? Do you hold any enmity against him on account of that wood deal?

A. No, not a bit, I would shake hands with him to-day.

Q. About how many cases of goods would you estimate that there was in the back room?

A. I could not say that I saw any, I saw a few cases in front.

Q. About how many?

A. I don't think I ever saw over a dozen.

Q. Was that in the bar-room or the room next to the bar-room?

A. Yes, standing in front of the barrels and around the front part of the saloon.

Q. Did you ever see any beer barrels in the front room? A. Yes, sir.

Q. How many?

A. At times I saw the whole alley was considerably filled, must have been six or eight barrels, beer barrels of empty bottles.

Recross-examination.

Q. From your present status of feeling you would not trust Black as though this difference never occurred, would you?

(Deposition of Peter Stoller.)

A. Trust him on what, what difference do you mean?

Q. Difference that you allude to between you and him?

Mr. COLE.—You mean the wood deal?

Mr. BRUMBACH.—The deal yes, wood deal.

A. I don't know as that would cut any figure between us at all, I don't think it would.

Q. You don't know; you don't think it would?

A. No.

Witness excused.

(Signed) PETER STOLLER." [323]

Mr. COLE.—I offer the deposition of W. P. Adams in evidence.

The COURT.—Taken under stipulation?

Mr. COLE.—Yes.

The COURT.—It may be admitted.

Mr. COLE.—These are just depositions in regard to the stock. Part of them were read yesterday. This is the deposition of W. P. Adams, a resident of Portland, Oregon, and a member of the firm of Henry Fleckenstein & Company.

[Deposition of W. P. Adams.]

(Reading:)

“Q. State your name and residence.

A. W. P. Adams; Portland, Oregon.

Q. State your occupation.

A. Manager and secretary of Henry Fleckenstein & Company.

Q. State whether or not the firm of Fleckenstein & Company ever sold and delivered to William

(Deposition of W. P. Adams.)

Black, one-half ($\frac{1}{2}$) barrel of Hudson Bay Rum. If so, state the date when the same was sold and the price received therefor.

A. Yes; December 11, 1911; \$52.80.

Q. State where said rum was delivered.

A. Delivered to O. W. R. & N. Boat, consigned to William Black, Long Beach, Washington.

Q. Produce and attach to your deposition and mark same Exhibit 'A' for identification, duplicate invoices or statement of all goods sold and delivered to the defendant William Black, by the firm of Fleckenstein & Company.

A. Invoices are hereto attached marked Exhibit 'A.'

Q. State whether said liquor does or does not improve in quality and value when aged in barrel.

A. Yes.

Q. If your answer is that it so improves, state what the yearly increase of value is.

A. About ten per cent.

(Signed) W. P. ADAMS."

We wish to offer in evidence the duplicate invoice.

[324]

Mr. LANGHORNE.—No objections.

Whereupon said invoice was admitted in evidence and marked Defendant's Exhibit "P" of this date.

Mr. COLE.—This is a statement of all the goods that Fleckenstein & Company sold to Mr. Black.
(Reading:)

[Defendant's Exhibit "P"—Statement of Goods Sold.]

"Dec. 11th, 1905, 5 casks Beer (quarts), @ \$11.00, \$55.00; 1 case Pabst Malt, \$17.00; total, \$72.00. June 9th, 1906, 5 cases Kentucky Taylor @ \$10.00, \$50.00. June 21st, 1906, 1/2 bbl. Sherry, 27 1/2 gal. @ \$.75, \$20.62. Aug. 18th, 1906, 1 gr. Flasks, S. F. pts. \$4.25; 1 gr. Flasks, S. F. 1/2 pts. \$3.25; 1 sack corks assorted 5 & 7, \$1.50; total \$9.00. Nov. 23rd, 1906, 2 c. Idanha, \$6.50, \$13.00; 4 M. T. Orange Wine Bottles labeled (gratis). Mar. 14th, 1907, 2 c. Idanha, \$6.50; \$13.00. Apr. 12th, 1907, 2 gr. Flasks 1/2 pt. \$3.25, \$6.50."

Mr. LANGHORNE.—You are not claiming that these are included in the inventory?

Mr. COLE.—Our purpose is to show all of the goods that he ever bought and then we can tell whether he had them on hand or not. (Continuing reading:) "May 15th, 1907, 1/2 bbl. Brandy, 2s—24.99 P. Gal. \$2.50, \$62.47. Aug. 29th, 1907, 4 7/8 gal. Kummel, \$2.25, \$11.00; 1 keg, \$1.25; total \$12.25. Aug. 7th, 1911, 1 bbl. Mellwood, 41.72 gal. @ \$2.25, \$93.87. Aug. 29th, 1911, 4 7/8 gal. G. Brandy, \$2.25, \$11.00; 1 sack #7 corks, \$1.25; 1 5-gal. keg, \$1.25; total, \$13.50. Oct. 23rd, 1911, prepaid freight, \$.65. Nov. 20th, 1911, 1 c. Decanters, filled B. Taylor, \$15.00; 1 c. Rock & Rye, \$6.00; prepaid freight, \$.75; total, \$21.75. Dec. 7th, 1911, 1/2 bbl. Jam Rum, 26.40, gal. \$2.00, \$52.80; 2 gr. Flasks 1 oz. [325] \$5.00, \$10.00; 1 gr. Flasks, 5 oz. \$4.00; Cooperage, \$1.50; total, \$68.30."

(Deposition of Daniel L. Schlegel.)

Mr. COLE.—I will now offer in evidence the deposition of Daniel L. Schlegel, taken under stipulation.

The COURT.—It may be admitted.

[Defendant's Exhibit "Q"—Deposition of Daniel L. Schlegel.]

Mr. COLE.—(Reading:)

“Q. State your name, age and residence.

A. Daniel L. Schlegel, forty years of age, residence, Louisville, Kentucky.

Q. State what, if any, position you hold with the firm of Old Kentucky Distillery Company, of Louisville, Kentucky.

A. I am vice-president and secretary of Old Kentucky Distillery, Inc., and have been with the firm fourteen years.

Q. State whether or not said firm of Old Kentucky Distillery Company ever sold and delivered to William Black, of Long Beach, Washington, any wines, liquors, cigars or other merchandise; if so, state what was sold, the amount, date and price paid therefor.

A. No, we did not sell him at Long Beach but did sell him a bill at Ilwaco, Washington on August 11, 1906; the amount of same \$172.44, it being Kentucky Deer Whiskey and these are all the whiskies we have sold him within the last five years.

Q. If you state that any goods were sold, state who paid the freight thereon.

A. He did as the whiskey above-mentioned was sold by us F. O. B. Louisville.

Q. Produce, attach to your deposition and mark Exhibit 'A' for identification, statement or duplicate

(Deposition of Daniel L. Schlegel.)

invoices of all goods sold and delivered by the firm of Old Kentucky Distillery Company, to William Black, of Long Beach, Washington.

A. I herewith file and mark Exhibit 'A' for identification the only bill of goods we have sold him [326] which was shipped to Ilwaco, Washington, on Aug. 11, 1906.

(Signed) DAN L. SCHLEGEL."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "Q" of this date.

Mr. COLE.—We wish to offer the deposition of W. O. Van Schuyver in evidence.

The COURT.—Taken under the same stipulation?

Mr. COLE.—Yes.

The COURT.—It is admitted.

[Defendant's Exhibit "S"—Deposition of W. O. Van Schuyver.]

Mr. COLE.—(Reading.)

"Q. State your name and residence. [327]

A. W. O. Van Schuyver, Portland, Oregon.

Q. State what, if any, position you hold with the firm of W. J. Van Schuyver & Company.

A. I am president of the company.

Q. State whether or not the firm of W. J. Van Schuyver & Company ever sold and delivered to William Black, of Long Beach, Washington, any liquors. If so, state what liquors were sold, the price received therefor and the date when said sale was made.

A. Yes, we sold him: 1 cs. Cyrus Noble Bourbon, 5's, \$15.00, on August 28, 1909; 2 cs. Glysmic, Qts. @

(Deposition of W. O. Van Schuyver.)

8.50, 17.00; 2 cs. B. H. Sauterne, Qts. @ 3.50, 7.00; 2 cs. B. H. Riesling, Qts. @ 3.25, 6.50, on March 26, 1910; 5 cs. W. S. Lacey, B. B. 5 cs. price 11.50, 57.50; 2 cs. Black & White, 13.50, 27.00; 2 Gro. #12 Corks, 75, 1.50; 1 Sk. #5 XX Taper Corks, 5-gro. 1.25, on May 20, 1910; 2 Gro. Olympia Flasks 10 oz. @ 4.50, 9.00; 1 cs. Glysmic, Qts. 8.50, on July 16, 1910; 2 Cans Com'l Alcohol, 13.50, 27.00 on Sept. 10, 1910; 2 Cans Com'l Alcohol, 9½, 2.95, 28.00 on March 26, 1910. 1 BBL. T. B. Ripey, 1892, 28, 3.75, 105.00; 2 cs. Cyrus Noble Bourbon, 5's, 14.50, 29.00, on Oct. 27, 1906. 1 Cs. Reads Porter, Pts. \$15.00; 1 Cs. DeKuyper Gin, 18.50, on April 19, 1907. 1 Cs. Reads Porter, Pts. 15.00 on Dec. 6, 1907. 4¾ Cal Jam Rum #3, @ 2.25, 10.70; Boxed Demijohn, 2.00, on August 28, 1909.

Q. If you state that liquors were sold, state to whom they were delivered.

A. These goods were delivered to Wm. Black, part of them at Ilwaco, Washington, and the remainder at Long Beach, Washington, as you can see from the invoices attached to this deposition.

Q. State whether or not the price paid therefor included the freight.

A. These [328] prices did not include the freight. The bills for the freight are also attached to this deposition.

Q. Produce, attach to your deposition and mark the same Exhibit 'A' for identification, statement or duplicate invoice of all goods sold to William Black by the firm of W. J. Van Schuyver & Company.

(Deposition of W. O. Van Schuyver.)

A. Invoices are attached thereto and marked Exhibit 'A' for identification.

(Signed) W. O. VAN SCHUYVER."

Mr. LANGHORNE.—We have no objections to its admission.

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "S" of this date.

Mr. COLE.—I wish now to offer in evidence the deposition of H. S. Wooley, taken under the same stipulation.

Mr. LANGHORNE.—We have no objections.

The COURT.—It may be admitted.

[Defendant's Exhibit "T"—Deposition of H. S. Woolley.]

Mr. COLE.—(Reading:)

"Q. State your name and residence.

A. H. S. Woolley and I reside at the City of Seattle, King County, Washington.

Q. State what, if any, position you occupy with the firm of Woolley & Company, Inc.

A. I am the Secretary and Manager of Woolley & Company, Inc.

Q. State whether or not the firm of Woolley & Company, Inc., ever sold and delivered to William Black, of Long Beach, Washington, any cigars. If so, state the amount sold, date and price paid therefor.

A. Yes, Woolley & Company, Inc., sold and delivered to William Black of Long Beach, Washington, eleven hundred cigars; the date of sale of said cigars was July 12, 1911 and the price paid therefor was

(Deposition of H. S. Woolley.)

Thirty-five Dollars, and said amount was paid in full on the 11th day of August, 1911.

Q. State whether or not the firm of Woolley & Company, Inc. ever [329] sold and delivered to William Black, of Long Beach, Washington, any Manila Cigars. If so, state the amount sold, date and price paid therefor.

A. Yes, Woolley & Company, Inc. sold William Black, of Long Beach, Washington, some Manila Cigars. The cigars mentioned and described in my answer to Question No. 3 were Manila cigars, and the amount sold, date and price paid therefor are as stated in my answer to Question No. 3.

Q. If any cigars were sold by the firm of Woolley & Company, Inc. to William Black, of Long Beach, Washington, state by whom the freight thereon was paid.

A. To the best of my knowledge and recollection, the freight on said cigars was paid by William Black, of Long Beach, Wash.

Q. Produce, attach to your deposition and mark same Exhibit 'A' for identification, statement or duplicate invoice of all cigars sold by the firm of Woolley & Company, Inc. to William Black, of Long Beach, Washington.

A. As required by Question 6, the witness produces and attaches to this deposition a statement and duplicate invoice of all cigars sold by the firm of Woolley & Company, Inc. to William Black of Long Beach, Washington, and the same is marked Exhibit 'A' for identification.

(Signed) H. S. WOOLLEY."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "T" of this date.

Mr. COLE.—I now offer in evidence the deposition of E. J. Cramsie, taken under stipulation.

No objections.

The COURT.—It may be admitted.

[Defendant's Exhibit "U"—Deposition of E. J. Cramsie.]

Mr. COLE.—(Reading:)

"Q. State your name and residence. [330]

A. E. J. Cramsie, Portland, Ore.

Q. State what, if any, position you occupy with the firm of 'The Hart Cigar Company.'

A. Secretary of the Hart Cigar Company.

Q. State whether or not the firm of The Hart Cigar Company ever sold and delivered to William Black, of Long Beach, Washington, any cigars. If so, state the date when said sales were made and the price paid therefor.

A. We sold him May 27th, 1910, 1 M Manilla, La Isabella, 30.-30.00; 300 Optimo R. V. 90.-27.00; 200 Monograms R. C. 85.-17.00; 74.00. We sold him July 20th, 1910, 1 M Isabella, 30.-30.00; 200 Gato R. V. 90.-18.00; 48.00 We sold him June 30th, 1911, 500 Gato R. V. 90.-45.00; 500 Optimo, R. V. 90.-45.00; 90.00.

Q. Produce and attach to your deposition and mark the same Exhibit 'A' for identification, duplicate invoices or statement of all cigars sold by the firm of The Hart Cigar Company to William Black during the two years prior to June 1, 1912.

(Deposition of E. J. Cramsie.)

A. Duplicate invoices are attached to the deposition and marked Exhibit 'A' for identification.

(Signed) E. J. CRAMSIE."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "U" of this date.

Mr. COLE.—I now wish to offer in evidence the deposition of C. R. Brinkley, taken under the same stipulation.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

[Defendant's Exhibit "W"—Deposition of C. R. Brinkley.]

Mr. COLE.—(Reading:)

"Q. State your name, age and residence.

A. C. R. Brinkley; age, 34; residence, Portland, Oregon.

Q. State what position you hold with the firm of Mason-Ehrman & Company, of Portland, Oregon.

A. I am the [331] creditman.

Q. State whether or not the firm of Mason-Ehrman & Company ever sold and delivered to William Black, of Long Beach, Washington, any 'Y. & B.' cigars. If so, state the date, the amount sold and the price paid therefor.

A. Yes, we sold him 1000 Y. B. Cigars on July 5th, 1911, price \$80.00.

Q. State whether or not Mason-Ehrman & Company ever sold and delivered to William Black, of Long Beach, Washington, any other cigars. If so, state what cigars have been sold, the date thereof and

(Deposition of C. R. Brinkley.)

the price paid therefor.

A. We sold him cigars as follows: 100 Carabana Cel. 9.00; 500 Full Dress, 26.00; 100 Carabana C. C. 9.00.

Q. Produce, attach to your deposition and mark Exhibit 'A' for identification, statement or duplicate invoice of all cigars sold and delivered to William Black, of Long Beach, Washington, by Mason-Ehrman & Company.

A. Duplicate invoices of all cigars also some Cigarettes and Cigarette Papers sold to Wm. Black are attached herewith and marked Exhibit 'A' for identification.

(Signed) C. R. BRINKLEY."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "W" of this date. [332]

[Testimony of W. S. Lee, for Defendant.]

W. S. LEE, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

My name is W. S. Lee. I am in the mercantile business, general repairing, and so on. I have had quite a good deal to do with locks. I reside in Tacoma. I have been in the business mentioned about twelve years.

Q. What kind of work do you do in connection with locks?

A. Well, we make keys and repair them, and most anything that comes up in the way of locks.

I am familiar with a great many locks, how they

(Testimony of W. S. Lee.)

are made and how they work. I am a general locksmith.

I know how the lock (Defendant's Exhibit "O") would be locked. There might be and could have been different ways how it might be locked. The bar stands out, I should say, about $\frac{3}{8}$ of an inch when it is locked. It is forced out by the key. When the lever is pushed out by the key, I mean when the bolt is pushed out by the key, there is a lever drops down with a little notch on it, dropped behind a little lug that is fast on the bolt, cast fast on the bolt thereby won't allow it to push back. That is true of all locks—locks like the kind I have in my hands (Defendant's Exhibit "O"). The other lock (part of Defendant's Exhibit "O") is a similar lock, practically speaking. I would say the same, as a general rule, regarding the other lock. A lock of this kind has more than one lever. One of that kind (indicating) scarcely ever has more than one. The bolt is withdrawn by the key, pushed out, the key throws up the lever the same as it is pushed out. I should say that the two locks are exactly alike; they would be [333] operated in the same way. Regarding the third lock, part of the mechanism of a lock in this particular case is destroyed, I might say as to how I thought it was but I could not testify positively, because this part here (indicating) contains the lock, and this portion up here (indicating) is merely the bolt, and I should say through the heat caused by the fire—you might say one has adhered to the other, has got so hot it fastened the two together. If these locks

(Testimony of W. S. Lee.)

were as I see them now they were not locked before the fire.

Cross-examination by Mr. LANGHORNE.

Q. Supposing they had been unlocked after the building started to catch fire? If somebody had unlocked them and gone into the building, they would be in that same condition?

A. Yes, I should say, yes. If they were unlocked before the fire.

Q. Supposing a fire broke out in the building and somebody unlocked the doors and went in, the locks would be in the same condition as they are there now (indicating)?

A. They surely would, yes, sir. [334]

Mr. COLE.—I will now offer in evidence the deposition of O. T. Wollaston.

The COURT.—Taken under stipulation?

Mr. COLE.—Yes.

The COURT.—It may be admitted.

[Deposition of O. T. Wollaston.]

Mr. COLE.—(Reading:)

“Q. State your name, age and residence.

A. O. T. Wollaston; twenty-nine years of age; I live in Louisville, Kentucky.

Q. State what, if any, position you hold with the firm of Bonney Brothers, of Louisville, Kentucky.

A. I am now and have been for the past three years office manager of Bonney Brothers, but connected with the company for the past ten years.

A. State whether or not said firm of Bonney Brothers ever sold and delivered to William Black,

(Deposition of O. T. Wollaston.)

of Long Beach, Washington, any wines, liquors, cigars, or other merchandise; if so, state what was sold, the amount, date and price paid therefor.

A. They have not sold him anything within the past five years.

Q. If you state that any goods were sold, state who paid the freight thereon.

A. As I stated before, we sold him nothing.

A. Produce, attach to your deposition and mark Exhibit 'A' for identification, statement or duplicate invoices of all goods sold and delivered by the firm of Bonney Brothers to William Black, of Long Beach, Washington.

A. I have no invoice as we have sold him nothing.

(Signed) O. T. WOLLASTON." [335]

Mr. COLE.—I will now offer the deposition of S. E. Haycraft, taken under stipulation.

The COURT.—It may be admitted.

[**Defendant's Exhibit "Z"—Deposition of S. E. Haycraft.**]

Mr. COLE.—(Reading:)

"Q. State your name, residence and occupation.

A. My name is S. E. Haycraft. I reside in the city of Berkeley, State of California. My occupation is that of employee of the firm of James De Fremery and Company, wholesale liquor dealers, at Number 519 Mission Street, San Francisco, California. [336]

Q. State what, if any, position you hold with the firm of James de Fremery & Co.

A. I am the Manager.

(Deposition of S. E. Haycraft.)

Q. State whether or not the firm of James de Fremery & Co. ever sold and delivered to William Black of Long Beach, or Ilwaco, Washington, one barrel of Imported Port Wine. If so, state the date when said sale was made and the price received therefor.

A. Yes, one octave—sixteen gallons—on the 10th day of June, 1908, at the price of \$2.50 per gallon, or \$40.00 in all, f. o. b. San Francisco. The wine was shipped to Black at Ilwaco, Washington.

Q. State whether or not the firm of James de Fremery & Co. ever sold and delivered to William Black of Long Beach, or Ilwaco, Washington, four cases of Gibson Rye Whiskey. If so, state the date when said sale was made and the price received therefor.

A. Yes, five cases were sold and delivered to him at Long Beach on June 29th, 1911, at the price of \$9.00 per case f. o. b. San Francisco.

Q. State whether or not the firm of James de Fremery & Co. ever sold and delivered to William Black of Long Beach, or Ilwaco, Washington, fifteen cases of J. B. Frazier's whiskey. If so, state the date when said sale was made and the price received therefor.

A. Yes, more than fifteen cases. On April 10th, 1906, while Black was at Ilwaco, the firm sold and delivered to him ten cases of J. B. Frazier's Whiskey at the price of \$10.00 per case f. o. b. San Francisco. On August 24th, 1908, the firm sold and delivered to him at Long Beach twenty-five cases of the same at

(Deposition of S. E. Haycraft.)

the price of \$9.50 per case f. o. b. San Francisco.

Q. State whether or not the firm of James de Fremery & Co. ever sold and delivered [337] to William Black of Long Beach, or Ilwaco, Washington, two cases of Muscat Wine. If so, state the date when said sale was made and the price received therefor.

A. Yes, two cases of Muscatel Wine at Long Beach on June 29th, 1911, at the price of \$3.50 per case f. o. b. San Francisco.

Q. State whether or not the firm of James de Fremery & Co. ever sold and delivered to William Black of Long Beach, or Ilwaco, Washington, two cases of Angelical Wine. If so, state the date when said sale was made and the price received therefor.

A. Yes, two cases of Angelica Wine at Long Beach on June 29th, 1911, at the price of \$3.50 per case f. o. b. San Francisco.

Q. Produce and attach to your deposition and mark same Exhibit 'A' for identification, duplicate invoices or statement of all goods sold and delivered to William Black by the firm of James de Fremery & Co.

A. I have attached to this deposition a statement of all goods sold and delivered to William Black of the firm of James de Fremery & Co. and marked the same exhibit 'A.'

Cross-interrogatories.

Q. State whether said liquor improves with age. State fully.

A. The wines might improve with age if properly handled and stored. The bottles should be stored in

(Deposition of S. E. Haycraft.)

a moderately cool place and even temperature and be laid flat. If stored in a warm place or left standing the wine would deteriorate. Whiskies would not improve in glass, but would ordinarily improve slightly in wood.

(Signed) S. E. HAYCRAFT.”

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "Z" of this date.

Mr. COLE.—I now wish to offer in evidence the deposition of [338] E. W. Duffy, taken under stipulation.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

[Defendant's Exhibit "A-1"—Deposition of E. W. Duffy.]

Mr. COLE.—(Reading:)

“Q. State your name and residence.

A. E. W. Duffy, Portland, Oregon.

Q. State what, if any, position you occupy with the firm of M. A. Gunst & Company.

A. Portland Manager for M. A. Gunst & Co., Inc.

Q. State whether or not the firm of M. A. Gunst & Company ever sold and delivered to William Black, of Long Beach, Washington, one thousand 'Attention' cigars. If so, state the date when said sale was made and the price paid therefor.

A. Yes. May 27, 1912, \$28.50.

Q. State whether or not the firm of M. A. Gunst & Company ever sold and delivered to William Black, of Long Beach, Washington, five hundred 'Alham-

(Deposition of E. W. Duffy.)

bra' cigars. If so, state the date when said sale was made and the price paid therefor.

A. Yes. May 27, 1912, \$17.50.

Q. State whether or not the firm of M. A. Gunst & Company ever sold and delivered to William Black, of Long Beach, Washington, any 'Manila' Cigars. If so, state the date when said sale was made and the price paid therefor.

A. Yes. May 27, 1912. These Manila cigars are the same ones as 'Alhambra' Cigars mentioned in Question #4. 'Alhambra' is the name of the brand and 'Manila' the kind of cigar. Alhambra Manila Cigars.

Q. State whether or not William Black ever purchased from the firm of M. A. Gunst & Company any 'Van Dyke' Cigars. If so, state the date when said sale was made and the price paid therefor.

A. Yes. June 15, 1910, \$45.00.

Q. Produce and attach to your deposition and mark the same Exhibit [339] 'A' for identification, duplicate invoices or statement of all goods purchased by William Black from the firm of M. A. Gunst & Company subsequent to June 14, 1910.

A. Invoices hereto attached marked Exhibit 'A.'
(Signed) E. W. DUFFY."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "A-1" of this date.

Mr. COLE.—I will now offer in evidence the deposition of C. C. Griffin.

The COURT.—Taken under stipulation?

Mr. COLE.—Yes.

No objections.

The COURT.—It may be admitted.

[**Defendant's Exhibit "A-2"—Deposition of C. C. Griffin.**]

Mr. COLE.—(Reading:)

“Q. State your name and residence.

A. My name is C. C. Griffin. I reside at Millbrae, San Mateo County, California.

Q. State what, if any, position you occupy with the firm of Sherwood and Sherwood, of San Francisco, California.

A. I am the creditman of Sherwood and Sherwood, a corporation, doing business at San Francisco, California.

Q. State whether or not said firm ever sold and delivered to William Black, of Long Beach, or Ilwaco, Washington, any liquors. If so, state what liquors were sold, the date thereof and the price received therefor.

A. Yes. Sherwood and Sherwood sold and delivered to William Black at Ilwaco, Washington, certain liquors between and inclusive of the 16th day of June, 1906, and the 26th day of August, 1907. On the 16th day of June, 1906, Sherwood and Sherwood sold and delivered to Black one case of [340] Burke's Old Tom Gin at the price of \$9.50; one case (pints) of Guinness Porter Stone at the price of \$15; one case of J. H. Cutter O. K. (V. F. O.) at the price of \$11 and one case of J. H. Cutter O. K. Whiskey at the price of \$11. On the 16th day of July, 1907,

(Deposition of C. C. Griffin.)

Sherwood and Sherwood sold and delivered to William Black one case of House of Lords Scotch Whiskey at the price of \$13; one case of Black & White Whiskey at the price of \$13; one case of Martell Brandy at the price of \$18; one case of Hennessy Brandy at the price of \$18; five cases of J. H. Cutter A #1 Whiskey at the price of \$10 per case—\$50; one case of J. H. Cutter A #1 Whiskey was delivered to Black without any charge therefor. On the 31st day of July, 1907, Sherwood and Sherwood sold and delivered to William Black one case of Black & White Whiskey at the price of \$13; one case of Martell Brandy at the price of \$18; one case of Hennessy Brandy at the price of \$18; five cases of J. H. Cutter A #1 Whiskey at the price of \$10 per case—\$50; one case of J. H. Cutter A #1 Whiskey was delivered to Black without charge therefor. Insurance on these goods amounting to \$.99 was also charged to Black. On the 26th day of August, 1907, Sherwood and Sherwood sold and delivered to William Black one barrel (pints) of Burke's Porter Stone at the price of \$15.50. No other goods have been sold and delivered by Sherwood and Sherwood to William Black.

Q. State whether or not the price received included the freight.

A. No, the price received for the goods did not include the freight thereon. The goods were sold to [341] Black f. o. b. San Francisco, California.

Q. State by whom the freight on said goods was paid.

(Deposition of C. C. Griffin.)

A. The freight on the goods was paid by William Black.

Q. Produce, attached to your deposition and mark same Exhibit 'A' for identification, duplicate invoices or statement of all goods sold by the firm of Sherwood and Sherwood to William Black, of Long Beach, or Ilwaco, Washington.

A. I have attached to this deposition an itemized statement of all goods sold and delivered by Sherwood and Sherwood to William Black and have marked the same Exhibit 'A' for identification.

(Signed) C. C. GRIFFIN."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "A-2" of this date.

Mr. COLE.—I will offer the deposition of Fred Zimmerman in evidence, taken under stipulation.

No objections.

The COURT.—It may be admitted.

[**Defendant's Exhibit "A-3"—Deposition of Fred Zimmerman.**]

Mr. COLE.—(Reading:)

"Q. State your name and residence.

A. Fred Zimmerman, Portland, Oregon.

Q. State what position you hold with the firm of F. Zimmerman & Company of Portland, Oregon.

A. I am Treasurer of the Company.

Q. State whether or not the firm of F. Zimmerman & Company ever sold any liquors to William Black, of Long Beach, Washington.

A. Yes.

(Deposition of Fred Zimmerman.)

Q. If you state that certain liquors were sold by F. Zimmerman & Company to William Black state where said liquors were shipped and whether or not the price paid included the freight.

A. Goods were shipped to Long Beach, Washington. These prices did not include freight.

Q. State who paid the freight on any goods that may have been sold by F. Zimmerman [342] & Company to William Black, of Long Beach, Washington.

A. We prepaid the freight on two invoices and the other we shipped collect.

Q. Produce, attach to your deposition and mark Exhibit 'A' for identification, statement or invoice of all goods sold by the firm of F. Zimmerman & Company to William Black, of Long Beach, Washington.

A. Invoices are attached and marked Exhibit 'A' for identification.

(Signed) FRED ZIMMERMAN."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "A-3" of this date.

Mr. COLE.—I now wish to offer in evidence the deposition of J. A. Fagothey.

The COURT.—Taken under stipulation?

Mr. COLE.—Yes.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

[Defendant's Exhibit "A-4"—Deposition of J. A. Fagothey.]

Mr. COLE.—(Reading:)

“Q. State your name and residence.

A. My name is J. A. Fagothey. I reside at San Francisco, California.

Q. State what, if any, office you hold with the firm of F. Chevalier Company.

A. I am the Secretary of The F. Chevalier Co., a corporation doing business at Numbers 246 to 256 Mission Street, San Francisco, California.

Q. State whether or not the firm of F. Chevalier Company ever sold and delivered to William Black of Long Beach, or Ilwaco, Washington, one barrel of Old Crow Whiskey. If so, state the date when said sale was made and the price paid therefor.

A. I cannot say of my own knowledge or recollection whether or not the company ever sold and delivered to William Black one [343] barrel of Old Crow Whiskey. If so it was before the great fire which occurred here April 18th, 1906. The Company sold Black lots of goods before that date, but all of the Company's books and records were destroyed by the fire and for that reason I am unable to state what goods were sold and delivered to him before April 18th, 1906. No sale to Black of Old Crow Whiskey has been made by the Company since the fire.

Q. Produce and attach to your deposition and mark same Exhibit 'A' for identification, duplicate invoices or statement of any and all goods which may

(Deposition of J. A. Fagothey.)

have been sold by the F. Chevalier Company to William Black.

A. I have attached to this deposition an itemized statement of all goods sold by The F. Chevalier Co. to William Black subsequent to April 18th, 1906, and have marked the same Exhibit 'A' for identification.

Cross-interrogatories.

Q. State whether said liquor in barrel does or does not improve in quality and value.

A. Yes, whiskey like Old Crow in barrels would improve in quality and value with age.

Q. If your answer is that it does improve state what the yearly increase is.

A. I think the increase would be about five per cent. per annum in quality and value.

(Signed) J. A. FAGOTHEY."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "A-4" of this date.

Mr. COLE.—I offer the deposition of Fred Rothchild in evidence, taken under stipulation.

No objections.

The COURT.—It may be admitted.

[Defendant's Exhibit "V"—Deposition of Fred Rothchild.]

Mr. COLE.—(Reading:)

"Q. State your name and residence. [344]

A. Fred H. Rothchild, Portland, Oregon.

Q. State whether or not you are a member of the firm of Rothchild Bros. of Portland, Oregon.

A. Yes.

(Deposition of Fred Rothchild.)

Q. State whether or not Rothchild Bros. ever sold and delivered to William Black four cases of Guggenheim Whiskey. If so, state the date of said sale and the amount received therefor.

A. Sold him five cases of Guggenheim Whiskey, December 12, 1910, \$45 for the five cases.

Q. State whether or not Rothchild Bros. ever sold and delivered to William Black four cases of Hermitage Whiskey. If so, state the date of said sale and the amount received therefor.

A. Possibly, though if so, such sale must have been made prior to April 15, 1908. We sold him no goods between August 1, 1908, and December 12, 1910, when we sold him the invoice of which the goods mentioned in question three were a part and none after that date.

Q. State whether or not Rothchild Bros. ever sold and delivered to William Black four cases of Yellowstone Whiskey. If so, state the date of said sale and the amount received therefor.

A. Same answer as #4. This whiskey is staple and no man unless he does no business keeps case goods more than a year, and our records before August 1, 1908, are inaccessible at present. Can get them if absolutely necessary but it isn't necessary.

Q. Produce and attach to your deposition duplicate invoices or statement of the goods before mentioned and mark same Exhibit 'A' for identification.

A. Invoice hereto attached marked Exhibit 'A.'

Q. Produce and attach to your deposition and mark the same Exhibit 'B' for identification, state-

(Deposition of Fred Rothchild.)

ment or invoices of all goods sold and delivered by the [345] firm of Rothchild Bros. to William Black.

A. Answered.

(Signed) FRED H. ROTHCHILD."

Whereupon said deposition was admitted in evidence and marked Defendant's Exhibit "V" of this date.

Mr. COLE.—I will offer the deposition of Frank Lyniff, taken under stipulation.

The COURT.—It may be admitted.

[Deposition of Frank Lyniff.]

Mr. COLE.—(Reading:)

"Q. State your name and residence.

A. Frank Lyniff; residence, ten miles northwest of Salem, Oregon.

Q. State whether or not you are acquainted with William Black, of Long Beach, Washington.

A. Yes.

Q. State whether or not you visited William Black's saloon located on lot six in block six, Tinker's North Addition to Long Beach, in Pacific County, Washington, within a short time prior to June 27, 1912.

A. I was in Black's saloon about June 24, 1912, and again about June 26, 1912.

Q. If you did visit said saloon shortly before June 27, 1912, state what you observed relative to the amount of wines, liquors and cigars at that time on hand by said Black and kept for sale by him in his saloon.

A. It looked to me like his stock had run down

(Deposition of Frank Lyniff.)

pretty well. He had us under the impression he was going to sell out or rent the place, to fix it up to rent it, so he said.

Q. If you did enter the saloon of William Black shortly prior to June 27, 1912, state about how many liquor barrels you saw, and state whether or not they were full or empty.

A. He had about six or eight barrels on the racks in the front room. I tapped on the heads of several of the barrels. They were all in a row, and they sounded pretty hollow. [346]

Q. State what you saw with reference to cases and barrels on hand by said Black shortly prior to June 27, 1912, with reference to said cases and barrels being full of liquor or empty.

A. I didn't notice very many cases in there. He had had a good many barrels on those racks in the front room, but when I was in there just before the fire, a lot of the barrels were gone and there were some old demijohns sitting where the barrels used to be, on a sort of a platform.

Cross-interrogatories.

Q. At the time you mention of having been in Black's saloon at Long Beach, Washington, and some time prior thereto, were you and Black on friendly terms?

A. Black got sore at me several times but I never had any grievance against him.

Q. Is it not a fact, that for some time prior to June 27th, 1912, that because of your frequently getting intoxicated, and boisterous, noisy and quarrelsome,

(Deposition of Frank Lyniff.)

about saloons, and in particular Black's saloon, that he had refused you liquor, and ordered you off of his said premises?

A. No, he never ordered me off his place or refused me a drink that I know of. I always bought most of my stuff there of him.

Q. Is, or is it not true, that because of his refusing you liquor, and ordering you off of his premises, as stated in question 2, herein, that you threatened him and his business, and to injure him, openly and publicly?

A. No, I never threatened him at all.

Q. At said time hereinbefore mentioned and prior thereto, were you a constant and habitual drinker of intoxicating liquors, and frequently became intoxicated, and involved in trouble therefrom with others?

A. I have had experience drinking intoxicating [347] liquors, but I wasn't a habitual drunkard or anything of the sort. I never had much trouble with others.

Q. Is, or is it not true, that about one year prior to June 27th, 1912, at Long Beach, Wash., you were thus involved, for striking and beating your mother.

A. Not at the time stated, but in July, 1912, my mother and I had some trouble which was our business and not anybody else's,—but there wasn't any striking and beating in it.

Q. Were you ever arrested for drunkenness or other criminal acts? A. No.

Q. Who was with you, and who was present, when

(Deposition of Frank Lyniff.)

you were at Black's saloon, on or about June 27th, 1912?

A. Dickinson, the bartender, was the only one there when I was in these times mentioned.

Q. At said times, were you a frequenter of other saloons at Long Beach, Wash., and equally so of Black's saloon?

A. I wasn't a frequenter more than anybody else who is in habit of going in saloons. When I went up town I would sometimes drop in the saloon. I would go to one about as much as the other.

Q. Who requested you to go to Black's and for what purpose?

A. The first time mentioned, June 24, 1912, no one requested me to go in; the other time, the day before the fire I went in to post up a Fourth of July poster.

Q. State whether your observation was casual, or by a personal inspection.

A. My observation was casual. Within a week or so before the fire, I know Black was gone, in Astoria I think, I got a gallon of whiskey there. The kind I wanted was all gone. The barrel was empty, I was told, so I purchased another kind. I noticed then the stock was not what it usually was, and [348] when I was in there posting up the 4th of July poster, I said to Dickinson, 'Where's all the stuff gone?' I had the pool hall above Black's place for two seasons and I used to see Black's place almost every day, and I noticed the difference in the stock not being kept up.

(Deposition of Frank Lyniff.)

Q. If you state it was a personal inspection, was it by an examination of each barrel, case or bunch of articles separately, if so for whom and the reasons therefor. A. Answered in #10.

Q. Was you associated or in any way connected with any other saloon-keeper at Long Beach, Wash., working against Wm. Black, in an endeavor to injure his business? A. No.

(Signed) FRANK LYNIFF." [349]

[**Testimony of F. G. Kellog, for Defendant.**]

F. G. KELLOG, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLE.)

Q. What is your name? A. F. G. Kellog.

Q. Where do you reside?

A. Tacoma, 1122 South J. street.

Q. What is your business?

A. My business principally is the liquor business.

Q. Are you engaged in the wholesale liquor business? A. I am.

Q. How long have you been engaged in such business? A. About thirty years.

Q. Are you familiar with the market value of the different brands of whiskies?

A. Yes, I am. I keep pretty close track of it.

Q. Are you familiar with the increase in value and evaporation of whiskey?

A. Well, I go by the Government tables or allowances for that.

(Testimony of F. G. Kellog.)

Q. Is there any published market reports of the values of the different whiskies at the different ages?

A. Yes, there are several.

Q. I will ask you with reference to Biles' whiskey price list, if that is a standard publication?

A. It is one of the leading ones.

Q. These Biles people are commission merchants?

A. Commission brokers.

Q. They are not interested in the prices except as brokers?

A. That is all, as I understand it. [350]

Q. I will ask you whether or not in the trade there is a certain standard fixed for evaporation for different years,—different periods of time.

A. The Government fixes that.

Q. Can you tell what the amount of evaporation of whiskey in wooden barrels would be for a period of six months—six years and four months?

A. I can tell you from the book, by referring to the table.

Mr. LANGHORNE.—I object to his referring to a book. That is clearly hearsay. He can be cross-examined from the book, but he cannot testify direct from it.

The COURT.—This is a price list published in the usual course of trade, one that liquor merchants buy in accordance with?

A. Yes. It is one that the—the Government won't allow only a certain outage, and if it is more, the owner has to stand it. It is supposed to be very nearly correct.

Objection overruled.

(Testimony of F. G. Kellog.)

Q. How often do you get this book?

A. Every thirty days.

Q. What is the date of the issue of this book I show you (indicating)?

A. June 25th, 1912.

Mr. LANGHORNE.—Who is that book issued by? The Government?

A. By J. W. Biles & Company.

Mr. LANGHORNE.—Liquor dealers?

A. Commission merchants, Cincinnati.

Mr. LANGHORNE.—That book is not purported to be issued by the Government?

A. It has the Government allowances in it. [351]

Mr. LANGHORNE.—It is not printed by Government authority?

A. No, sir, it is not printed by Government authority. The Government authorities have nothing to do with it.

Q. (By Mr. COLE.) Are those figures used as a basis for the trade?

A. The outage?

Q. Yes. A. Yes, sir.

The COURT.—He may be allowed to testify from that book.

Q. I will ask you what the outage would be on a barrel of Old Crow Whiskey for a period of six years and five months. This liquor he says was dated January, 1906. From that time to the date of the fire would be six years and five months.

A. That would be somewheres from seventy-two to seventy-six months?

Q. Yes.

A. The allowance there is twelve gallons and a half.

(Testimony of F. G. Kellog.)

Mr. LANGHORNE.—That is right, I think.

Q. Now, what would be the outage for a period of three years?

A. Well, it runs from thirty-six to forty months. That would be eight gallons; from thirty to thirty-three months would be seven gallons, seven and a half gallons for thirty-three months and not more than thirty-six months.

Q. Can you state what the market value of Old Crow of 1906 age was in January, 1912?

Mr. LANGHORNE.—Double stamp, add that to it, please.

Mr. COLE.—I do not know whether it was double stamp or not. [352]

The WITNESS.—What was the date of the inspection on that?

Q. The whiskey is said to be of the age of 1906, January 2d, 1906.

A. Well, in the spring of 1906 it is quoted at \$1.55.

Q. What is that \$1.55?

A. That is proof gallons, the original gauge.

Q. Is there anything to be added to that?

A. \$1.10 tax and the outage on the barrel. \$1.10 and the city and county tax. That varies.

Q. You say that whiskey then in 1912 would be worth about \$2.65 a gallon?

A. I would like to correct just one statement here. It is customary where you buy whiskey in bond all charges are paid up to date and that outside of the \$1.10 paid to the Government and the outage. Of course, you have to lose that yourself.

(Testimony of F. G. Kellog.)

Mr. LANGHORNE.—I move to strike that out. That is not material to the case.

The COURT.—Motion granted.

Q. What would you say then would be the total market value of such Old Crow in June, 1912?

A. Do you mean by that freed whiskey?

Q. Yes.

A. That would be five-year old whiskey, wouldn't it?

Q. In June, 1906, that would be six years old.

A. It would not be a year old until 1907.

Q. January 1906 to June 1912 it would be six years and five months.

A. That would be about seventy-eight or seventy-nine months. This book has no total in carrying that out. [353] I have one in my pocket of Block Brothers that carries the tables up to date. The books are practically the same as far as they go. There is very little difference in them. How many months is that?

Q. That would be above seventy-seven, six years and five months.

A. From seventy-two to seventy-six would cover it?

Q. Yes, approximately.

A. That would be $\$3.30\frac{3}{4}$, according to this table.

Mr. LANGHORNE.—Where are you fixing the price at,—here in this country?

A. No, sir, at the bonded warehouse in Louisville.

Q. What is the freight from Louisville to the coast?

(Testimony of F. G. Kellog.)

A. In carload lots, \$1.40 a hundred, I think, local, \$1.75, I think. The local runs from eighteen to twenty cents. You cannot figure always exactly on freight but it is very close.

Q. I will ask you whether or not this evaporation you spoke of applies to all liquors in wooden barrels.

A. Yes, sir.

Q. This outage you refer to. You stated about twelve and a half gallons for seventy-two months?

A. Yes, sir.

Q. That applies to all liquors kept in wooden barrels?

A. In steam heated warehouses, Government warehouses, it is supposed to.

Q. Would there be any difference in a steam heated Government warehouse and in a saloon building heated by a stove?

A. I should not think so unless it sets close to the stove. [354]

Q. It would be approximately the same when it is kept close to the stove?

A. I would not think there would be very much difference in an ordinary heated room.

Q. Do you know how much an empty barrel, an empty whiskey barrel weighs, the barrel that is used?

A. I do not know, but it is marked on every barrel.

Q. They are hardwood, are they?

A. Oak, yes, sir.

Cross-examination.

(By Mr. LANGHORNE.)

Q. Mr. Kellog, you have been in the liquor busi-

(Testimony of F. G. Kellog.)

ness you say for about twenty years?

A. About thirty years.

Q. These prices that you fix on Old Crow 1906 double stamp goods are wholesale prices at Louisville, are they not?

A. Yes. This was quoted from Cincinnati (indicating book).

Q. Yes, I know, but that is the wholesale price at Louisville, Kentucky, three thousand miles away from here? A. Yes, sir.

Q. You say that is \$3.50 a gallon?

A. I will have to look again and see.

Mr. LANGHORNE.—Yes, that is your figures.

A. Well, I do not remember. What was the number of months we took, seventy-two to seventy-six?

Mr. COLE.—Yes.

A. \$3.30³/₄.

Q. And to that is to be added seventeen or eighteen cents a gallon for freight charges?

A. Yes, from eighteen to twenty cents, I figured.

[355]

Q. Whiskey increases in value with its age?

A. It does to a certain extent.

Q. For instance, Old Crow will increase in value for six or seven years?

A. Yes, longer than that probably.

Q. What, then, would be the fair market value of Old Crow whiskey,—what would be the fair market value per gallon of Old Crow whiskey here in Tacoma or here in the State of Washington that

(Testimony of F. G. Kellog.)

had been bought in 1906 and held by the dealer until 1912?

Mr. COLE.—I object to that as not competent. This evidence shows this whiskey was bought in 1909.

The COURT.—The jury will be the judges about the testimony in that regard. Objection overruled. Exception allowed.

Q. What would be the fair market value per gallon for it here?

A. That would be an advance of how many years?

Q. Six years, suppose it was of the vintage of 1906.

A. That is what I have been giving you figures on here.

Q. What would be—if a wholesaler or retailer, rather, paid about \$4.00 a gallon for it in Louisville, Kentucky, six years ago, what would it be?

A. That would be about \$3.30.

Q. And to that you would add the freight?

A. Yes, sir.

Q. How much?

A. \$3.50 if he added the freight.

Q. If he paid \$3.50 in Louisville, Kentucky, six years ago, what would be the worth of that per gallon here in the State of Washington, on the coast here in June, 1912, [356] what would be the fair market selling value? What is its market value out here after it is shipped out here?

A. Well, it would sell anywhere from four to five dollars a gallon, I suppose.

(Testimony of F. G. Kellog.)

Q. Is that all?

A. That is all I would sell it for.

Q. How many drinks in a gallon of ordinary whiskey?

A. From sixty to eighty drinks, different locations.

Q. You retail that at fifteen cents a drink?

A. From ten to fifteen.

Q. That whiskey increases with age as it gets older, and after it gets to a certain point, then it becomes more valuable? A. Yes, sir.

Q. You are acquainted with Mr. Armstrong of the Olympic Club? A. Yes, sir.

Q. He is a good judge of the value of old liquors, is he not?

Mr. COLE.—I object to that as not competent.

The COURT.—Objection sustained.

Q. You say it would be worth from four to five dollars a gallon?

A. At retail by selling it out by the gallon; then different people and different locations sell it at different prices.

Q. Well, it would sell, then, at a higher market price in a small place where there was no other kind of liquor?

A. Old Crow is considered a high standard whiskey.

Q. Here in Tacoma you might sell it for \$4.00 a gallon, and [357] that would be its fair market value but if it was sold down on the ocean it might be \$5.00?

(Testimony of F. G. Kellog.)

A. Oh, yes. It varies in the different localities.

Redirect Examination.

(By Mr. COLE.)

Q. Can you tell what the value of Cedar Brook, McBrayer's whiskey, dated 1903 in June, 1912, would be?

(Witness consults book.)

Mr. LANGHORNE.—I may save you some trouble. Is Cedar Brook McBrayer, 1903, now on the market?

Mr. COLE.—In June, 1912, was not the question? It does not make any difference whether it is on the market now or not.

A. There is no 1912 quoted in this book.

Mr. COLE.—1903 is the date.

A. Well, there is no 1903 here. It goes back to 1904.

Q. What is 1904?

A. No quotation only in 1907.

(Witness excused.) [358]

Mr. COLE.—I wish to offer in evidence the deposition of R. Blaisdell, taken under stipulation.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

[Deposition of R. Blaisdell.]

Mr. COLE.—(Reading:)

“Q. State your name and residence.

A. R. Blaisdell, Portland, Oregon.

Q. State what, if any, position you occupy with the Ilwaco Railroad Company.

(Deposition of R. Blaisdell.)

A. I am Auditor of the O. W. R. & N. Railroad Company, part of which was formerly the Ilwaco Railroad Co., and as such I have control of the records of said Ilwaco Railroad Company, now a part of the O. W. R. & N. Company.

Q. State whether or not said Ilwaco Railroad Company has a railroad line from Ilwaco, Washington, to Long Beach, Washington, and operates freight and passenger trains thereon. A. Yes.

Q. State whether or not the Ilwaco Railroad Company ever carried and delivered to William Black, of Long Beach, Washington, any merchandise. If so, give an itemized statement thereof, stating the character and quantity of goods carried and the dates when the same were carried and delivered.

A. Yes, as per itemized statement attached hereto and marked Exhibit 'A.'

Q. State whether or not the Ilwaco Railroad Company ever received from William Black for transportation from Long Beach, Washington, to outside points, any goods, wares or merchandise. If so, state the character and amount so received and the dates thereof.

A. Yes, as per itemized statement attached hereto and marked Exhibit 'B.'

Q. State as near as possible from whom any merchandise was received by the Ilwaco Railroad Company that may have [359] been carried to Long Beach, Washington, for William Black and delivered to him at that place by said railroad company.

(Deposition of R. Blaisdell.)

A. All the records we have of the shippers are shown on Exhibit 'A.'

Q. If said railroad company received any merchandise from William Black for shipment from Long Beach, Washington, state when the same was delivered, if possible.

A. All information available is shown on Exhibit 'B.'

Q. Produce, attach to your deposition and marked Exhibit 'A' for identification, statement, bills or invoices of all goods carried over the Ilwaco Railroad to William Black, at Long Beach, Washington, or from William Black at Long Beach, Washington.

A. Statement of inbound merchandise to William Black is marked Exhibit 'A' for identification and outbound goods from William Black Exhibit 'B' for identification.

(Signed) R. BLAISDELL."

Counsel for defendant proceeds to read part of Exhibit "A-5" to the jury.

Mr. LANGHORNE.—This is not evidence of the facts therein stated. It is simply a bill made by the railroad company. They do not vouch for the correctness of that. I object to its being received in evidence as evidence of any of the things therein stated. It is nothing more or less than evidence of these shipments.

Mr. COLE.—It is important because it would show whether there were any full barrels shipped.

The COURT.—Objection overruled. Gentlemen of the jury, you will understand that this is a record

(Deposition of R. Blaisdell.)

kept by the railroad company and if kept in the ordinary course of their business, dealing with other people or with this [360] plaintiff at a time when there was no trouble on foot or nothing anticipated, it will be admissible in evidence, and you will understand at the same time, so far as its being an entry concerning barrels being empty or partly full, that would be in their interests, that they were keeping track in order to protect themselves against the man whose goods they were shipping and it is not entitled to the same weight with regard to how much was in the barrels that were partly full as to the number of barrels. If there was one gallon out of a barrel it would not be entirely full, and that is going to leave you in doubt to a great extent as to how empty or how full they were.

Mr. COLE.—This statement describes the goods by giving a description of the goods and the weight.

Whereupon said itemized statements were admitted in evidence and marked Defendant's Exhibits "A-5" and "A-6" of this date.

Noon recess.

Mr. COLE.—We wish to offer in evidence the answers of Mr. Black to those interrogatories that were identified by Mr. Black yesterday.

Mr. LANGHORNE.—No objections.

The COURT.—They may be admitted.

Whereupon said answers were admitted in evidence and marked Defendant's Exhibit "A-7" of this date.

Mr. COLE.—We wish to offer in evidence this

(Deposition of R. Blaisdell.)

inventory that Mr. Kayler testified yesterday that he made in connection with this sale.

Mr. LANGHORNE.—For what purpose, may I ask? [361]

Mr. COLE.—Well, the object is to show that this inventory was not made for the purpose of that sale but for the purpose of making out the policy.

Mr. LANGHORNE.—What?

Mr. COLE.—For the purpose of showing it was made out for the purpose of writing that policy and not for any sale.

Mr. LANGHORNE.—No objections.

The COURT.—It may be admitted.

Whereupon said inventory was admitted in evidence and marked Defendant's Exhibit "A-S" of this date.

Mr. COLE.—I would like to offer in evidence the deposition of Mr. Ebon Parker.

The COURT.—Taken under stipulation?

Mr. COLE.—Yes.

The COURT.—It may be admitted.

[Deposition of Ebon P. Parker.]

Mr. COLE.—(Reading:)

“Direct Examination.

Q. State your name, age, residence and occupation.

A. Ebon P. Parker, or E. P. Parker; I will be 59 years old the last day of November.

Q. Residence?

A. Astoria, Oregon, Clatsop County.

(Deposition of Ebon P. Parker.)

Q. Occupation? A. Hotel-keeper.

Q. What is the name of the hotel that you keep at Astoria? A. Parker Hotel.

Q. How long have you been the proprietor and keeper of the said hotel?

A. About five years, this time.

Q. The past five years, you say?

A. Yes, sir.

Q. Are you acquainted with William Black, the plaintiff? A. Yes, sir.

Q. How long have you been acquainted with him?

A. Well, it has been a number of years that I have been acquainted with him; I think he was engineer on the railroad the first time I got acquainted with him, over there at Ilwaco.

Q. Were you acquainted with him during June, [362] 1912? A. Yes, sir.

Q. Did you see William Black during that time?

A. Yes, sir.

Q. State when and where.

A. At the Parker Hotel; he had room 44 on the—24th, 25th and 26th.

Q. Go on and state what month and year.

A. That was in June, 1912.

Q. In giving the dates, what do you refer to?

A. I refer to the Register and the Bed Book.

Q. Was William Black stopping in Astoria, Oregon, during this entire part of the time?

A. Yes, sir.

Q. When did you see William Black last upon the evening of the 26th of June, 1912?

(Deposition of Ebon P. Parker.)

A. At twelve o'clock, at midnight, close to twelve o'clock, it was close around twelve.

Q. State the circumstances that occurred at the time you saw him.

A. Well, I showed him his room that time, and then in the morning they rang up and wanted to find him—I presume they called him and they had a telephone message for him—and I went up and called him, and he came down in the office.

Q. Speaking of the morning, what morning was that? A. The morning of the 27th.

Q. State how you know that he was, during those three days, all the time in Astoria?

A. Well, I was talking to him every day and then I saw him in the evening when he went up to his room.

Q. What time did he usually go to bed?

A. About twelve o'clock, along about twelve o'clock.

Q. Twelve o'clock? A. Yes, sir.

Cross-examination by Mr. WILKINS.

Q. Mr. Parker, you say it was the 24th, 25th and 26th of June? A. Yes, sir.

Q. —that he was there? On the 24th, did he come to the hotel? A. Yes, sir.

Q. Do you know where he came from?

A. Seaside.

Q. From Seaside? A. Yes, sir.

Q. He told you that, did he? A. Yes, sir.

Q. You say [363] he was stopping all that time at the hotel? A. Yes, sir.

Q. How often did you see him?

(Deposition of Ebon P. Parker.)

A. Well, I saw him every day; I was in the office every day from six in the morning; he generally came down in the morning about six and half-past six, he was a pretty early riser.

Q. Were you around the hotel all the time?

A. Yes, sir, all the time.

Q. What hours?

A. I was there from half-past five in the morning until twelve at night, unless I would go up the street, I slept there.

Q. You slept in the hotel?

A. Yes, sir; I would go to bed about twelve o'clock.

Q. Now, you say you saw him the night of the 26th at—

A. About twelve o'clock, yes, sir.

Q. How do you happen to remember?

A. Because I had it in my bed book and know when I called him the next morning.

Q. I understand about the next morning, but at night?

A. Well, because we went to bed together.

Q. Couldn't it have been ten or eleven o'clock?

A. No, sir, no.

Q. Are you sure about the exact time?

A. Pretty close to twelve o'clock, yes, sir.

Q. Pretty close?

A. Close to twelve o'clock; I would always go to bed about twelve o'clock; after the trains get in and all that, I would generally go to bed, and we went to bed when he was there—he was a great fellow to talk and we used to talk a good deal about old times.

(Deposition of Ebon P. Parker.)

Q. Did you see him after that?

A. After the—

Q. After he went to bed?

A. Not until the next morning.

Q. You don't know, of course, whether he was in his room during, after—

A. Well, he was when I called him in the morning.

Q. But between the time he went to bed and the next morning, you did not see him, of course?

A. No, sir. [364]

Q. The next morning, did he leave?

A. They called him—they called him—a telephone message came in for him and I went to the room and called him, and he came down and answered the telephone and told me, 'By God! My place burned up!'—he talked to friends across the river, then he said he would go and catch this boat to go over on, the 'Nahcotta,' and I think he was going to take the 1:45 boat to go across after dinner, anyway, sometime he was going to go; just after he left the house, a policeman came in, the Chief of Police came in and wanted to know if Mr. Black was there, and I told him, 'Yes, he had just gone up to go across the river, his place burned up.'

Q. What did the policeman say he wanted with him?

A. He didn't tell me what he wanted with him.

Q. Did he say he had a warrant?

A. He didn't say he had a warrant; I described him, the clothes he wore, and he told me, 'I think I

(Deposition of Ebon P. Parker.)

passed him going up the street.' I told him, 'You will find him at the O. R. & N. Co. dock, he is going right over.' The policeman told me afterwards, though, in the afternoon when he came down, that he had a warrant for him, see.

Q. You have known Mr. Black a long time, have you? A. Yes, sir.

Q. You have always been friendly with him, have you?

A. Always been friendly, always been; he always stayed at the hotel when he came through; he was there on the 20th of that month and went to Seaside; he was down to Seaside two or three days looking around, then he came back; he told me he was going to Seaside and went down there and when he came back, he stayed there a couple, three days.

Redirect Examination by Mr. BRUMBACH.

Q. What hour was [365] it, usually, that Mr. Black went to bed?

A. Well, he went to bed, along about twelve o'clock when he used to go to bed.

(Signed) EBON P. PARKER."

Whereupon attached invoice was admitted in evidence and marked Defendant's Exhibit "A-9" of this date.

Mr. COLE.—I wish to offer in evidence the deposition of J. B. Longini taken under stipulation.

The COURT.—It may be admitted.

[Deposition of J. B. Longini.]

Mr. COLE.—(Reading:)

"Q. State your name and residence.

(Deposition of J. B. Longini.)

A. My name is J. B. Longini. I reside at Chicago, Illinois.

Q. State what, if any, position you hold with the firm of Sunny Brook Distillery Company.

A. I am creditman.

Q. State whether or not William Black, of Ilwaco, or Long Beach, Washington, ever ordered from the Sunny Brook Distillery Company any goods consisting of wines or liquors. If so, state whether or not said goods were shipped in pursuance of the order, and if shipped, to whom they were shipped.

A. Yes, William Black did order liquors from Sunny Brook Distillery Company, and said liquors was shipped in pursuance to the orders. The first bill of goods was August 1st, 1905, for ten barrels of Sunny Brook; five barrels #16,415 were shipped to Blummauer & Hoch, Portland, Oregon, on Nov. 11, 1908; and five barrels #19,162 were shipped under said order to Boltz & Wennig, Seattle, Washington, on September 29, 1909. The second bill of goods, which was bought on or about January 11, 1907, consisting of fifteen barrels of Sunny Brook, five of which were shipped to Blummauer & Hoch, Portland, Oregon, on November 11, 1908; five barrels #322,256 were shipped to Boltz & Wennig, Seattle, Washington, on April 2, 1909; [366] five barrels #305,257 were shipped to D. A. Hunt, Raymond, Washington, on March 17, 1909.

Q. State what, if any, liquors or wines were sold to William Black, of Long Beach, or Ilwaco, Wash-

(Deposition of J. B. Longini.)

ington, by the Sunny Brook Distillery Company, and give the date of any such sale and the price received therefor.

A. On August 1, 1905, ten barrels of Sunny Brook Whiskey were sold to William Black, by the Sunny Brook Distillery Company, at \$.75 per gallon or \$358.32 for which the Sunny Brook Distillery Company received eight notes of \$44.79 each, the first maturing October 15, 1905, and one each month thereafter, which notes have been paid; and a further order was received by the Sunny Brook Distillery Company, on or about January 11, 1907, for fifteen barrels of Sunny Brook at \$.80 per gallon, or \$586.08, for which the Company received twelve notes of \$48.84 each, the first maturing March 1, 1907, and one each month thereafter and all of said notes have been paid.

Q. State by whom the price was paid for any goods shipped by the Sunny Brook Distillery Company to William Black, of Ilwaco, or Long Beach, Washington.

A. The price for said goods above mentioned was paid by notes of William Black.

Q. State whether or not the shipments were made direct to William Black, at Ilwaco, or Long Beach, Washington.

A. The shipments were not made to William Black direct, but were shipped as set forth by my answer to the third interrogatory.

Q. State whether or not the price paid for any goods shipped by the Sunny Brook Distillery Com-

(Deposition of J. B. Longini.)

pany to William Black, included the freight.

A. The price paid did not include freight.

Q. State by whom [367] the freight was paid on any goods shipped by the Sunny Brook Distillery Company to William Black of Ilwaco, or Long Beach, Washington.

A. I do not know by whom the freight was paid on any of the goods above referred to; but it was not paid by the Sunny Brook Distillery Company. The goods were shipped from Louisville, Kentucky, the freight to be collected from the consignee.

Q. Produce, attach to your deposition and mark Exhibit 'A' for identification, statement or invoice of all goods sold by the firm of Sunny Brook Distillery Company to William Black, of Ilwaco, or Long Beach, Washington.

A. Attached herewith are invoices of all goods sold by the firm of Sunny Brook Distillery Company to William Black, of Ilwaco or Long Beach, Washington, which invoices are marked Exhibit 'A.'

(Signed) J. B. LONGINI."

Whereupon attached invoice was admitted in evidence and marked Defendant's Exhibit "A-10" of this date.

Mr. COLE.—We will call Mr. Black to the stand.

Mr. LANGHORNE.—Do you call him as your own witness?

Mr. COLE.—Yes, sir.

Mr. LANGHORNE.—Let the record show that he called him as his own witness. [368]

[Testimony of William Black, for Defendant.]

WILLIAM BLACK, plaintiff herein, having been heretofore sworn, now being recalled, testified on behalf of defendant as follows:

Direct Examination.

(By Mr. COLE.)

Q. You bought a good deal of beer in bottles down there? A. A good deal of beer; yes, sir.

Q. And you returned a good many empty bottles?

A. Yes, sir.

Q. What credit were you allowed for the empty bottles?

A. Forty cents a dozen. I paid the freight.

Mr. LANGHORNE.—No questions.

(Witness excused.)

Defendant rests. [369]

And the plaintiff, to further maintain the issues on his part, introduced the following evidence in rebuttal:

**[Testimony of William Black, in His Own Behalf
(Recalled in Rebuttal).]**

WILLIAM BLACK, recalled for further examination, testified in rebuttal as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. You just heard this deposition read about the Sunny Brook Whiskey, I believe? A. Yes, sir.

Q. I believe you testified on the stand on direct examination that you never did have any Sunny Brook?

(Testimony of William Black.)

A. No, sir, I never had any. I bought it but I sold it, sold the certificates to Blumauer & Hoch. I never handled it. I never saw it.

Q. Directing your attention for a minute to the insurance policy for \$2,000 that was formerly carried by Mr. Loomis, I will ask you if that policy covered anything in your warehouse.

A. No, sir, it did not. I had no insurance on the warehouse at all.

Q. What was in the warehouse at the time the \$2,000 policy was in existence?

A. I had about \$4,000 worth of liquors in there.

Q. I am talking now about when it was you moved the liquors from the warehouse into the saloon that was destroyed by fire; when was that?

A. In May.

Q. I believe that is the time that the carpenter testified to.

A. Yes, when they were working there, about that time. [370]

Q. It has been insinuated here that you burned this building. I wish you would kindly tell the jury what you were worth in June of last year.

Mr. COLE.—I do not think that is material.

The COURT.—Objection overruled. You will understand, gentlemen of the jury, this is only admitted as a circumstance. If the plaintiff was in desperate straits, pressed in the manner that has been indicated in the evidence, about the agitation down there for the County to go dry,—that was allowed to go in as a possible motive why a desperate

(Testimony of William Black.)

man might burn his place down. Now, on the same line of reasoning, the Court permits the plaintiff to tell what his financial condition was. If he was in good circumstances,—it would be less likely that some man would burn a building than if they were in strained circumstances, and you will consider this for no other purpose.

Mr. COLE.—We do not claim he burned it because he was in straitened circumstances. We admit that he is well off financially. We do not charge that he did burn it because he was in straitened circumstances, so I do not think it is admissible.

Objection overruled.

Q. Tell the jury what your circumstances were in June of last year.

A. Well, possibly \$50,000.00.

Q. Did you owe anything in June of last year?

A. Yes, I did.

Q. I will ask you if since this fire you paid up what you owed on your stock? [371]

A. Yes, sir.

Q. Do you owe any firm any sum of money now?

A. One man claims I owe him.

Q. How much?

A. \$5—\$4.50, Mr. Hazeltine.

Q. Now, this building that was burned, did you recently have any work done on that?

A. Yes, sir.

Q. What was it you had done?

A. I had the Anderson brothers build a concrete basement and I had cement piers put under there.

(Testimony of William Black.)

Q. Why did you have cement piers put under there?

A. On account of the weight of the building, and I also had extra floor joists on the lower floor. I did not change the floor joists. I had an extra one put in, and I also had an office built and other fixings.

Q. How long did you own that building?

A. It was a new building and I think it was started in 1909.

Q. What was the reasonable value of that building in June of last year?

A. The building cost me a little over \$4,800 all told the way it stood.

Q. What was the reasonable value?

A. Well, of course, this building was a building built by days' work; it was not built by contract; it was built extra strong with double floors on the lower floor.

Q. What would you say was its reasonable value?

A. Probably it cost a little more the way I had it done. Probably the building was worth \$4,000.

Q. When was it that you had this concrete work done? [372]

A. I had the concrete work done on that in April.

Q. Of what year? A. 1912.

Q. Now, Mr. Black, there has been introduced here a statement of shipments over a railroad from Ilwaco to Long Beach. I want you to tell the jury first something about the topography of the ground, the land down there on which Ilwaco, Nahcotta and Long Beach are situated. What is it?

(Testimony of William Black.)

A. We are on a peninsula which faces the beach, ocean beach on one side and the other is Willapa Bay, makes a neck in there.

Q. And you are in between there?

A. Right in between there, and then there is a bay right down below Long Beach in front of Ilwaco called Baker's Bay. It is near the mouth of the Columbia River.

Q. I will ask you if you have made a sketch of the topography of the land (handing witness paper)?

A. As near as I could make it, yes, sir.

Q. Is that fairly correct (indicating)?

A. Yes; that is as good as I can make it. This is Willapa Bay (indicating); this is South Bend over there (indicating) on Willapa River. Here is the bar (indicating); right up here is Oysterville (indicating) and down here is Nahcotta and there is the steam road that runs from South Bend to Nahcotta (indicating all along). There is a long dock that runs out here (indicating) to Ilwaco Bay, and the city of Ilwaco built a city dock. The railroad has since practically abandoned that dock and continued a road up to a place called Meglers on the [373] Columbia River up here (indicating).

Mr. LANGHORNE.—That is enough. I wanted to get the situation before the jury. I will offer this in evidence for the purpose of illustrating the testimony of the witness.

No objections.

The COURT.—It may be admitted.

(Testimony of William Black.)

Whereupon said sketch was admitted in evidence and marked Plaintiff's Exhibit 7 of this date.

Q. Shipments would come to your place in other ways and manners than was indicated by these sheets that were introduced? A. Yes, sir.

Q. Shipments coming from the east by way of the Northern Pacific, where would they branch off at for your place?

A. I will explain this whole business about this freight,—some wholesalers routed it over the Northern Pacific and it would be unloaded at Kalama and then it would come down on the steamer and they would land it in Astoria, and other freight came around by South Bend.

Q. By Chehalis?

A. Yes, depends on what route the shippers had shipped it over. From San Francisco most of the freight came up by steamer. It was cheaper freight, various lines, sometimes one line and sometimes another. Here is an instance where I had some Roxbury Rye come from—(interrupted).

Mr. LANGHORNE.—I do not care about a lengthy explanation. What I want to know is whether it came to your place to Long Beach other than by the railroad, shipped by the [374] railroad from Ilwaco.

A. Yes, that is what I am trying to tell the jury.

Q. That is all I want to know. Did you also have freight coming to you from Ilwaco other than by this railroad? A. Yes, sir.

Q. How?

(Testimony of William Black.)

A. A man by the name of Haggbloom started an opposition line against the railroad and the citizens of Ilwaco, and the people fell out with the railroad company and wanted to support this line, this man, and this man came into my place with Mr. Jacobson and interviewed me and others and wanted to know if we would give him our freight, and I signed up and I gave him my freight, all that came up by steamer, and it was hauled up to Long Beach by wagon.

Q. When you removed your stock of goods from Ilwaco to Long Beach, were any barrels of whiskey transported to Long Beach other than by freight?

A. A man by the name of Knowels hauled up five barrels I had stored, five barrels of liquor that had never been tapped.

Q. How far is it from Astoria to Ilwaco across the bay?

A. From Ilwaco I should judge it was over twenty miles. I am not much of a judge on water, though.

Cross-examination.

(By Mr. COLE.)

Q. You say you had some of your shipments come by South Bend? A. Yes, sir.

Q. Will you name one of them? [375]

A. Yes, Roxbury Rye, that shipment of Roxbury Rye came that way from Seattle.

Q. How many cases did you get?

A. I forget how many there was, some of them were broken; they were in bad order; I do not re-

(Testimony of William Black.)

member. There was some difficulty with the company about that.

Q. You got a certain number of cases in that shipment? A. Yes, sir.

Q. How many?

A. Well, I forget. There was some missing.

Q. Fifty or thirty? A. Thirty cases, yes.

Q. And they came over the Northern Pacific?

A. No,—they came over the Northern Pacific into South Bend, yes, sir.

Q. What other shipments did you get?

A. Well, my friend, I cannot remember these things. I have been in business a long while—(interrupted).

Q. Can you name any other shipments that you got through South Bend?

A. I got liquor from Haggerty from Seattle.

Q. That came by South Bend?

A. That came that way, yes, sir.

Q. That was eight years ago, ten years ago?

A. Well, now, I dealt with Mr. Haggerty while I was in Ilwaco.

Q. That didn't come by South Bend?

A. It came that way, yes, sir.

Q. What else did you get by South Bend?

A. I got cigars from Seattle that came that way and other [376] stuff; I do not remember now the different shipments I got, but I got considerable goods from that way at different times.

Q. You do not remember when you bought those thirty cases of Roxbury Rye, do you? You bought

(Testimony of William Black.)

those in the fall of 1911, didn't you?

A. I think so, yes.

Q. You received those cases of Roxbury Rye over the Ilwaco railroad on the 7th day of November, 1911, didn't you?

A. I did not receive thirty cases, sir.

Q. How many did you receive?

A. Well, I think there was something like four cases; that is, it amounted to that; it was stolen and broken.

Q. The other twenty-six were gone? You say you received four cases?

A. No, I said there was about that many damaged.

Q. You received them, though, didn't you?

A. Yes, I received them with a statement of that kind, bad order.

Mr. LANGHORNE.—I object to that as immaterial, whether or not the cases were broken or what.

The COURT.—Objection overruled. It tests the memory of the witness.

Q. You got the cases just the same?

A. No, sir, some short.

Q. How many did you get?

A. It amounted to four and a half cases broken and some stolen.

Q. Was this half a case short too or was it broken?

[377]

A. In one case there was nothing but broken bottles.

Q. Do you mean to tell the jury you did not get any damage cases?

(Testimony of William Black.)

A. I got some of them but I never received thirty cases.

Q. Is it not a fact that you received thirty cases including what were good and what were damaged?

A. No, sir.

Q. Did you make any claim on the railroad company that time?

A. I let the firm whom I bought from settle that with them.

Q. Did you ever buy any other shipment of thirty cases of liquor?

A. I might have done so in my time.

Q. You would not swear to it, would you? You say these thirty cases of liquor you received from the Ilwaco Railroad Company on the 11th of November, 1911—on the 3d day of November, 1911,—

A. That must be the Roxbury Rye but I did not sign for thirty cases.

Q. If you said you got thirty cases of Roxbury Rye by way of South Bend, you were mistaken, were you not?

A. I got it by way of South Bend. It came that way by South Bend and the O. W. R. & N. transferred to the boat and from the boat to the railroad at Nahcotta.

Q. What else did you get?

A. In that shipment?

Q. Yes.

A. That is the only thing I got that came from those people.

Q. Did you get most of your goods by way of haul-

(Testimony of William Black.)

ing by wagon or over the railroad? Where did you get the most? [378]

A. I guess I got the most by railroad.

Q. Then if these cases were taken to you at Long Beach by way of South Bend or Ilwaco railroad, you received them anyway? A. Sure.

Q. They should be included in these liquors?

A. They should be.

Q. When you signed up this contract with this man to haul freight, where did you agree that he would haul your freight?

A. I do not remember; it was when he was running there.

Q. In 1910? A. 1910 I guess it was.

Q. Was it 1911 or later? A. 1910.

Q. You do not remember much about it?

A. 1910 I think it was. I remember I signed a contract and I remember that he hauled the goods; I remember that I lived up to it with him.

Q. What kind of a contract was it?

A. Just an agreement that he could get the steamer freight.

Q. For how long a time?

A. I disremember the time but I know I lived up to it.

Q. How long did you live up to it?

A. I lived up to it as long as,—I guess it was a couple of years.

Q. You lived up to it until the time you burned out? A. As well as I could, yes, sir.

Q. You signed this contract in 1910 and he hauled

(Testimony of William Black.)

most of your freight up to the time you burned out?
[379]

A. I would not be positive. It was 1910. It was when he ran there.

Q. It could not be any earlier than that, could it?

A. Well, I would not be positive. It might have been earlier and it might have been later.

Q. You signed a written contract?

A. I signed a written contract, yes, sir.

Q. Did he haul any whiskey for you?

A. Yes, sir.

Q. How many barrels?

A. I do not remember.

Q. Would he handle a dozen?

A. I could not state.

Q. Would he handle five?

A. Say, I do not remember how many he did haul for me.

Q. You say he did handle some, did you?

A. I know he did. He paid the freight over there and collected from me.

Q. What else did he handle besides whiskey?

A. Beer and ice and soda water and other stuff.

Q. What did you pay per barrel for that beer, about \$9?

A. I bought it in five barrel lots. I think I paid either forty or forty-five dollars, I would not be certain as to that; it was something like forty dollars I think. I think that was the rate on it.

Q. Then you got a credit back of \$2.40 for empty bottles?

(Testimony of William Black.)

A. What bottles I had why, yes, I bought lots of bottles.

Q. When you told the jury the shipments over the Northern Pacific by way of South Bend were not included in this you were mistaken (indicating)?
[380]

A. I have never looked at that list there (indicating).

Q. Let us get back to this whiskey you moved into your saloon in May; how many barrels did you move in; have you any idea as to the number or have you forgotten?

A. I have forgotten what I moved in there.

Q. You did not show them to the assessor?

A. No, sir.

Q. You did not tell him that they were out there, did you? A. No, sir.

Q. How long had they been out there?

A. Well, they had been out there ever since the building was built.

Q. Do you know when they built that building?

A. Possibly four years.

Q. They were put in there at the time you moved there? A. Shortly afterwards, yes, sir.

Q. Were any of them full?

A. Yes, they were untapped.

Mr. LANGHORNE.—I want to object to this as not recross-examination.

The COURT.—There is a part of it that was not, but there is nothing before the Court now.

(Testimony of William Black.)

Q. In regard to this building, you say it cost \$4,800.

A. Cost me \$4,800, that is what it cost me.

Q. When you bought it, what did you pay?

A. \$2,500 for the building and three lots—(interrupted).

Mr. LANGHORNE.—I object to that as absolutely immaterial.

The WITNESS.—I will answer that.

Q. Go ahead and answer.

A. I paid \$2,500 for that property and gave the houses [381] away; that is, there were three old shacks and I gave them to somebody to move them off and the other building I tore down. It was nothing but an old shack. I did not consider the buildings on that land worth a cent. There were three lots, I paid \$2,500 for.

Q. Do you mean to tell the jury you built that saloon building new? A. Yes, sir.

Q. Absolutely new?

A. With the exception of the foundation on the lower floor. There was a new foundation there.

Q. Who was the contractor?

A. There was no contractor; it was built absolutely by day's work.

Q. Did you have some carpenters?

A. I had carpenters.

Q. Who were they?

A. Too numerous to mention, some of them were good and some of them—(interrupted).

Q. What year did you start in building it?

(Testimony of William Black.)

A. I think it was in 1909.

Q. How long did it take you to build it?

A. Some time, I do not remember how long.

Q. Finished it that year?

A. Yes, sir, finished it that year; there was a lot of work on it.

Q. You mean to say that you gave away all the buildings on this land when you bought it?

A. With the exception of the old building I tore down and I gave some of that stuff away and some of the boards I [382] sold. A fellow gave me some carrots for it. I had an old horse and he gave me a lot of those and the rest of it I burned.

Q. You built this new building in 1909?

A. I think that is the year. I would not be positive.

Q. Could it be 1910?

A. I came there in 1908 and I think in 1909 it was finished. I would not be positive to that but I think it was as near as I can remember.

Q. What did you use for your saloon when you first came there?

A. I used this building that was there on the place and built this other building on over this building. This old building is right inside of the other.

Q. Isn't it a fact that you did nothing but remodel that old building at a cost of three or four hundred dollars? A. No, sir, that is not a fact.

Q. You built the new building over the old building? A. Right over the old building.

Q. Did you take the old building out?

(Testimony of William Black.)

A. You bet I did!

Q. After the new one was finished? A. Yes, sir.

Q. How did you move it out?

A. The people who worked on it tore it out as fast as they could.

Q. Were any Long Beach carpenters working on that building? A. Yes, sir.

Q. Who were they?

A. A man by the name of Greenbloom, two men by the name of [383] Hall, a man by the name of Gould.

Q. Did Mr. Wray have anything to do with it?

A. Mr. Wray done some work for me consisting of putting in I think a mission back bar—(interrupted).

Q. He is the carpenter who testified here yesterday?

A. Yes, a back bar, and they passed a new state law ordering the windows to be a certain height from the sidewalk and he took the windows out. I ordered them glass windows and Mr. Wray put them in, and the stairs did not suit me going upstairs, in place of going up from the inside I had them moved, and he did some finishing work—(interrupted).

Q. Never mind, that is enough of that. Did Mr. Wray help on the new building?

A. Only after it was built, a little on the inside finishing.

Q. You didn't use any of that old building in making your new one?

A. The only thing that is in that building of the old building is an independent floor, an independent

(Testimony of William Black.)

foundation. That building had a new foundation under it. It was an old building with a new foundation under it, heavy timbers; it is an independent foundation of itself outside of the one that was already on there.

Q. You used them both? A. Yes, sir.

Q. That is all of the old building that you left there, just the foundation?

A. Just the foundation, that is as I remember it now. If there is anything more, I do not know about it. They might have used some pieces of blocks and some little [384] things I do not remember. I was busy at other business. I know that the building cost me about \$4,800, paints and everything.

Q. Did you make an inventory of that for the insurance company, the cost of it?

Mr. LANGHORNE.—Of what?

Mr. COLE.—This building, material and labor,—he said it cost \$4,800.

Mr. LANGHORNE.—I object to that as immaterial.

Objection overruled.

Q. Did you make an inventory?

A. About the cost of the building?

Q. Yes.

A. I think I did. I do not remember whether I did or not but I think I did.

Q. Did you make an inventory of the amount of material and the work that went into it?

A. I had no record of the amount of work or material.

(Testimony of William Black.)

Q. Any inventory you fixed up when you made your policy would be based on your recollection, would it?

A. Not in regard to the lumber. I tried to describe the building, give them the length and all the information I could give them about it. I would like to explain something in that building. I had it shingled over the rustic around the upper story afterwards. We have very heavy winters there and I had a lot of extra work done on that building and it cost me more than it probably would if I had had it built in the first place. You see, putting the building over the other building made the cost a little more. [385]

Redirect Examination.

(By Mr. LANGHORNE.)

Q. Did you have a policy of insurance on this dwelling-house, on the saloon building?

A. Yes, sir.

Q. How much? A. When it burned down?

Q. Yes. A. \$2,000.

Q. Was it paid? A. Yes, sir.

Q. What company?

A. The Manchester, you bet!

Q. Have anything on the— A. Yes, sir.

Q. How much? A. \$1,000.

Q. Was it paid? A. Yes, sir.

Q. That was a different company from this?

A. That was a different company from this; yes, sir.

(Witness excused.) [386]

[**Testimony of Joe Anderson (Recalled in Rebuttal).**]

JOE ANDERSON, recalled for further examination, testified in rebuttal as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. What did you say your occupation was?

A. Carpenter and builder.

Q. How long?

A. Oh, I have been in that business for six years, I guess.

Q. Are you acquainted with the saloon building of Mr. Black? A. Yes, sir.

Q. From your experience as contractor and builder, tell the jury what the reasonable value of that building was in June of last year.

A. Well, I believe I could build a building like that for \$4,000.

Cross-examination.

(By Mr. COLE.)

Q. Did you help build that building?

A. No, sir. I done quite a little work after they built it.

Q. You are just giving your estimate then from your knowledge of the value of real property?

A. Well, I tore down a part of the inside. I know how the building was built and I watched the building when they built it so I know about what lumber went in the building and I know it was all Number 1 lumber, probably cost twenty-eight or thirty dollars

(Testimony of Joe Anderson.)

a thousand. I do not believe you could build that building for less than \$4,000.

Q. Do you know the amount that went into it?
[387]

A. Not exactly, no, sir. I know the size of the building.

(Witness excused.)

Mr. LANGHORNE.—I would like to substitute a map with the consent of counsel in place of that diagram.

Mr. COLE.—This map will be all right, I think the map will be more accurate.

The COURT.—Very well.

Whereupon said map is substituted for Plaintiff's Exhibit Number 7. [388]

[Testimony of Henry Kayler (Recalled in Rebuttal).]

HENRY KAYLER, recalled for further examination, testified in rebuttal as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. Whose signature is that (indicating)?

A. It is from the Davenport-Dooley people.

Q. They are the agents of this defendant company? A. Yes, sir.

Q. When you wrote this policy of insurance, you made an immediate report of it to Davenport-Dooley & Company, the general agents? A. Yes, sir.

Q. And this is the letter you received, is it (indicating)? A. Yes, sir.

(Testimony of Henry Kayler.)

Mr. LANGHORNE.—I will offer this in evidence.

No objections.

The COURT.—It may be admitted.

Whereupon said letter was admitted in evidence and marked Plaintiff's Exhibit 8 of this date.

Mr. LANGHORNE.—This is under date of June 24th, 1912, from the Davenport-Dooley Company to Henry Kayler (reading):

“Noting on the back of this report building is lighted with gas lamps. We believe that the usual gasoline lamp permits should be made a part of the policy and will appreciate your favoring us with the usual endorsements. Thanking you very much for the fine line of business, we remain,

Very truly yours,

DAVENPORT-DOOLEY & COMPANY,
DIXWELL DAVENPORT.”

(Witness excused.) [389]

[**Testimony of Theodore Jacobson (Recalled in Rebuttal).**]

THEODORE JACOBSON, recalled for further examination, testified in rebuttal as follows:

Direct Examination.

(By Mr. LANGHORNE.)

Q. You were a merchant in Long Beach quite a while? A. Yes, sir.

Q. What do you know about the transportation facilities about the merchants receiving their freight, whether by railroad or otherwise?

A. Both ways, that is, by way of railroad or

(Testimony of Theodore Jacobson.)

around by the boat from Astoria.

Mr. COLE.—I object to that as immaterial.

Objection overruled.

Q. Do you know about the merchants signing up with some private individual to bring in their freight from Ilwaco? A. Yes, a great many of us did.

Q. You were one of them?

A. Yes, I was acting in the capacity of agent for Mr. Haggbloom.

Q. Were you signed up?

A. About the same time I took Mr. Haggbloom up to Mr. Black.

Q. Do you know when it was?

A. I do not remember, but it strikes me it was 1909; I would not be positive.

Q. About that time?

A. Yes; I was running a grocery store there.

Q. It was a contract whereby you and Mr. Black agreed that this fellow should haul all your freight?

[390]

A. No, it was not a contract in a way, it was an agreement to stand by Mr. Haggbloom to get him enough business to pay him to run his boat across.

Q. Your agreement was different from Black's?

A. About the same.

Q. Did you hear him testify that he agreed to give all of the freight?

A. Yes, that was the sum and substance of it; we intended to patronize him all we could.

(Witness excused.)

Plaintiff rests.

Whereupon, counsel for the defendant made a motion for an order of the Court directing the jury to return a verdict in favor of the defendant, on the ground that the evidence showed conclusively that the plaintiff was guilty of false swearing in connection with his loss in violation of the terms of the policy, and therefore the policy was void; which motion was denied by the Court, to which ruling of the Court the defendant excepted and the exception was allowed.

WHEREUPON, the defendant, in writing, requested the Court to instruct the jury as follows:

[Instructions Requested by Defendant.]

(3) The insurance policy in this case provides that the entire policy shall be void if the insured shall be guilty of any fraudulent or false swearing touching any matter relating to the insurance or the subject thereof, whether before or after loss. If you find from the evidence that the plaintiff in this case has willfully, or carelessly, made claim for loss exceeding [391] the true market value of the property destroyed in the fire and made affidavit to the same, then in that event he cannot recover in this action. False swearing consists of stating a fact as true which the party does not know to be true. If the plaintiff has inserted in his sworn proof of loss any articles as burned which were not burned and knowingly puts such false and excessive valuation on single articles or on the whole property as displays a reckless disregard of truth, he cannot recover.

(4) If appears from the evidence in this case that

the plaintiff on or about the 25th day of August, 1912, submitted to the defendant a sworn proof of loss, wherein the plaintiff claimed that the value of the property destroyed in the fire and covered by the policy amounted to the sum of \$7,378.87. If you find from the evidence that the plaintiff knew the property destroyed in the fire was of a value substantially less than that amount, or that he could, by the exercise of reasonable diligence, have known that said property was of substantially less value, he cannot recover in this action, even though the actual market value of the property exceeds the sum of five thousand dollars.

(6) If you find from the evidence that the plaintiff has inserted in his sworn proof of loss articles not covered by the policy and which were not insured by the policy, then your verdict should be for the defendant.

(10) If you find from the evidence that the plaintiff in his sworn proof of loss, placed an excessive valuation on the whole property burned, or on single portions or quantities thereof, and that such excessive claim was wilfully or carelessly made, then your verdict should be for the defendant.

(11) The jury is instructed that there is no evidence as [392] to the market value of the case goods and therefore they must be eliminated.

The Court thereupon gave the following instructions to the jury:

[Instructions.]

GENTLEMEN OF THE JURY:

It is the duty of the Court to instruct you regard-

ing the law. There has been a large number of exhibits admitted in this case, documents of various kinds, and other things. You will take these to your jury-room when you retire to consider your verdict and you will also take with you the pleadings in the case. It is your duty to examine the pleadings in order to determine just what they allege and admit and deny. In order that you may have the matter more clearly in your minds while these instructions are being given, I will give you a brief summary of what the pleadings set up.

Mr. Black, the plaintiff in the case, comes into court with his complaint and alleges that on a certain date in June last year, mentioned in the complaint, that he owned a certain stock of liquors and cigars at Long Beach, Washington; that he took out an insurance policy on them with the defendant company for \$5,000; that after that time he had a fire; that his building burned down and that his liquors [393] and cigars and this stock was destroyed; that his loss on account of it was \$5,000; that he made the proof of loss and complied with all the conditions of the policy and that the company has not paid him.

The company comes in and denies that he was the owner of the goods, admits that it issued a \$5,000 policy to him, admits that the building burned down in which his stock was located, and denies that he had any such amount of liquors there as he claimed, denies that his loss was \$5,000, or anything in excess of \$1,000, and then comes in with what in law is known in law as a Third Affirmative Defence. They set up that this policy provided that if the

plaintiff, or policy-holder, was guilty of any false or fraudulent swearing, either before or after the fire, after his loss, that the policy would be void and he could not recover; that the proof of loss which he made was false and fraudulent, that is, that he stated in there that he had a large amount of goods that were destroyed by fire that he did not have, and that he knew that he did not have them, and that he placed a grossly exorbitant value on the goods, which he knew to be exorbitant; that he falsely made these claims in order to deceive and defraud the insurance company. Then they set up another defense that the insurance policy provided that he should exhibit at such reasonable place that the company should require his bills and invoices and inventory of his goods, and that these were requested of him on the 9th or 10th of September or the 9th or 10th of October, I think, and that he refused to do so and therefore should not recover, and for the last affirmative defense they set up the assertion or claim that he destroyed this stock of goods by either burning [394] the building and its contents down or causing it to be burned.

The plaintiff then comes back with a reply which you will have with you in which he denies that he made any fraudulent misrepresentation concerning the amount of goods that he had in there or their value, denying that he caused this fire and stating that he did exhibit to the defendant company all the bills and invoices which he had,—all that he had, and that all the bills and invoices had been destroyed by the fire so that he could not comply with the re-

quest in that particular.

There are certain of these issues that places what is called in law the burden of proof upon the plaintiff and there are certain others of them in which the burden of proof is upon the defendant. Before I go into the case any further, I deem it best to advise you on what the law terms the burden of proof. That side of the case which has the burden of proof has to establish its case by a fair preponderance of the evidence, and a fair preponderance of the evidence is known as the greater weight of the evidence, and as evidence does not weigh in the exact way in which we refer to material things about their weight, it is merely a figurative expression, and all the Court can tell you is that that evidence preponderates which is of such a nature or character or amount as to so appeal to your intelligence, reason and experience as to create and induce belief in your minds, and if there is any evidence in opposition to it, that it is still of such strength and character as to induce belief in your minds in spite of what has been brought against it. Now, on the matter of whether the plaintiff owned these [395] goods, he will have to maintain that by a fair preponderance of the evidence and also the fact of the issue of the policy not being denied, and that there was a policy issued, it is not necessary to instruct you about these things, but he will have to, by a fair preponderance of the evidence, show the amount of his loss. It is not denied that it is not paid. He will have to show that he complied with the terms in the policy, substantially complied with them, en-

titling him to recover.

The defendant having alleged that the plaintiff caused this fire himself, so far as that affirmative defence is concerned, the burden of proof is upon the defendant and not upon the plaintiff in that regard, and so with that affirmative defence wherein the defendant says that the plaintiff forfeited his policy by making a false and fraudulent proof of loss. The burden is upon the defendant in that regard.

Now, on this question, I will instruct you further, that is, where the burden of proof is upon the plaintiff, if he does not maintain it, if the evidence is evenly balanced, you will decide those issues in favor of the defendant. Then, where I have instructed you in regard to the fraud in the burning of the stock and the building, where I have told you that the burden of proof is upon the defendant, if they do not support that to satisfy you in your minds that he did that, then the burden of proof is upon the defendant, because the weight of the proof would not be enough to sustain that, as the law exacts from the defendant.

You have heard a good deal in this case about the opinions of witnesses regarding the market value. The way to [396] arrive at that is if you determine that the market value of the stock covered by this insurance was greater than \$5,000, and you find the other issues for the plaintiff, it would not be necessary for you to determine exactly how much it was, because the plaintiff cannot recover more than \$5,000. You would not have to figure exactly how much, if you concluded the stock was worth \$5,000,

and find the other issues for the plaintiff; but if you could not find the other issues for the plaintiff, and in figuring it up you find it was less than \$5,000, it would be necessary for you to determine what the market value of that merchandise,—what the fair market value of it was at the time and place where it was burned. There has been a great deal of evidence admitted in the case about the cost in Kentucky, Portland, San Francisco, Seattle and other cities, and evidence concerning freight rates, and evidence concerning liquors and the sale for them at retail, and other matters of that kind, but they are only sidelights, evidence that has been admitted for your consideration in throwing a light on this question of probably what the value, the market value of this liquor and these cigars were at Long Beach at the time of this fire.

The Court instructs you that the purpose of the policy is in case of an honest loss enabling the policyholder to make himself whole, that is, to replace the property he has lost. You will understand that the retail value at which liquors sell by the glass,—you will not resort to that because if he had a large stock of goods, he did not have to buy it that way, he did not have to make himself whole by buying back at retail what he lost by the fire. But the [397] law presumes that a man will be able to make himself whole in all probability by buying back at the fair market value, and that is known and sometimes described as the value which one, having a piece of property, was willing to sell at but did not have to sell, and another man,—found a man willing to buy

but who did not have to buy, the price at which these two men would arrive at would be the fair market value. Another way of arriving at that would be the price that men would be compelled to pay for property where they go into the open market to buy.

Regarding the charge in one of these affirmative defences that the plaintiff falsely and fraudulently misrepresented in his proof of loss concerning the amount of his stock destroyed and the value of it, the Court deems it his duty to instruct you, there is one thing you will consider as applying to his expression concerning values that is not applicable to his proof of loss, concerning the amount. You will understand that if he was honestly mistaken that he would not forfeit his right under the policy, that his misstatements must have been false or fraudulent, and to be false it is necessary that he knew they were false when he made them, wilfully, intelligently, knowingly, misrepresented. The mere fact that he was mistaken or the mere fact that he overvalued the goods, if it was an honest opinion regarding the value of them, that would not defeat him. On these questions of value, you will understand it is a matter of opinion. It is very difficult to convict a man of perjury on his opinion concerning the value of anything. Men so vary in their opinions in these matters that it would be dangerous, if there was any reasonable ground to sustain [398] the plaintiff's belief regarding the value, to reject that and conclude, simply because you find that the goods were not worth as much as he said they were, that

therefore he was necessarily making a fraudulent representation.

There has been a number of written instructions requested, and if I to some extent repeat what I have already told you, you should not think that I am trying to impress upon you certain points in the case to the exclusion of others.

“It is provided by the statute of the State of Washington (sec. 105, Laws of 1911, p. 243), as follows: ‘Every insurer who makes insurance upon any building or property or interest therein against loss or damage by fire, and every agent who issues a fire insurance policy covering on any building or property or interest therein, and every insured who procures a policy of fire insurance upon any building or property or interest therein owned by him, is presumed to know the insurable value of such building or property or interest therein at the time such insurance is effected.’ Under this provision of the law I charge you that the defendant insurance company was presumed to know at the time it issued this policy of insurance in the sum of \$5,000 covering the property described in said policy and situated in the buildings described in said policy, the value of said property. If it now claims otherwise the burden of proof rests with the defendant to so show by a fair preponderance of the evidence.”

“Whenever fraudulent acts are either done or attempted the parties guilty thereof usually conceal their acts, and the direct and positive proofs thereof rest wholly in the [399] breasts of the guilty parties. In such cases, therefore, the usual and ordi-

nary proofs by which such frauds, if fraudulent acts be attempted or done, are established, are the facts and circumstances surrounding the transactions. Such facts and circumstances, in order to be sufficient to establish the fraudulent act or interest in issue in any given case, must be such as will convince the mind of an ordinarily prudent person that the party charged is guilty of such fraud, and such as is not susceptible of any natural and reasonable explanation consistent with the honesty and integrity of such person in respect to the matters in issue."

"The jury is instructed that fraud may be proven by circumstantial evidence as well as positive proof. When fraud is charged, as is done in this case, express proof is not required. It may be inferred by strong presumptive circumstances." I think the Court instructed you when you were being empaneled that facts may be established either by direct or circumstantial evidence, and in order to arrive at a finding on circumstantial evidence, it is evidence of the facts standing around the matter which you are investigating or the question which you are attempting to settle. It is not evidence of an eye-witness where a man can tell you, 'I saw this,' and if you believe it that settles it, but as I told you, it is the circumstances surrounding such a transaction, where the finding has to be based entirely on circumstantial evidence, those circumstances must be proven by a fair preponderance of the evidence. Any circumstances that are argued, to tend to prove fraud on the part of the plaintiff, that are not proven by a fair preponderance of the evidence, you will reject.

These circumstances [400] must not only be proven as true, but they must be consistent with each other. They must be consistent with the theory that the plaintiff was guilty of fraud, and they must be inconsistent with any reasonable theory that he was innocent of fraud. If the circumstances do not measure up to that standard, then they are not sufficient on which to make a finding against the plaintiff.

“If the plaintiff has been guilty of fraudulent or false swearing he cannot recover in this action even though the value of the property destroyed by fire is more than the amount of the policy. If you should find a verdict in favor of the plaintiff the amount should be the actual market value of the property at the time of its destruction by fire, and no more.”

You will understand that I am not changing the instruction which I gave you concerning the amount of his recovery. If you should find the other issues, that is, that he had not been guilty of fraud, then you should find that the value of the property was in excess of \$5,000, you need not determine the exact amount, but if he was guilty of fraud in these matters as defined to you, even then, if you should find the value in excess of \$5,000, he could not recover because of his fraud.

“One of the defenses urged in this case is that the policy is void because the plaintiff was guilty of false swearing in making his proof of loss. The precise point urged is that he falsely and fraudulently, and for the purpose of defrauding the defendant Insurance Company, overestimated the amount and value of the property destroyed by fire. Now on this phase

of the case I charge you that before you can [401] find for the defendant upon this issue you must find that the plaintiff, for the purpose of defrauding the defendant Insurance Company, wilfully and knowingly made a false affidavit as to the amount or value of the goods destroyed by fire. Even though you should find from the evidence that the plaintiff overestimated the value of the goods so destroyed by fire, that fact standing alone would not be sufficient to void the policy; but you must further find that the statement made in the affidavit as to the value of the goods was wilfully made for the purpose of deceiving or defrauding the defendant or its agents. The law does not convict anyone of fraud or false swearing simply because they place a higher value on their holdings than they are actually worth, unless as I have said, such valuation is placed thereon for the purpose of fraud or deception. A false statement, to defeat recovery in such a case as this, must be false to the knowledge of the assured and made for the purpose of deceiving or defrauding the Insurance Company, or its agent. In considering this phase of the case, you should take into consideration all the facts and circumstances developed on the trial and disclosed by the evidence. The burden of proof as to this defense is on the defendant, and unless it has satisfied you by a fair preponderance of all the testimony that the stock of goods so claimed to have been destroyed by fire was overstated or overvalued, and that such excess claim or overvaluation was wilfully and knowingly made for the purpose of defrauding the defendant Insurance Company, then your find-

ing as to this defense should be in favor of the plaintiff and against the defendant.”

“Another defense set up in the Answer of the defendant [402] insurance company is that the plaintiff refused to produce to defendant for examination all bills for purchases of stock, inventories, invoices or record of sales made, vouchers or certified copies thereof, so as to enable the defendant to ascertain the extent of plaintiff’s alleged loss. It was the duty of the plaintiff to submit for examination to defendant, or its authorized agent, all books of account, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, at such reasonable place as might be designated by the defendant or its agent. In reply to this affirmative defense urged by defendant, plaintiff alleges that all books of account, bills, invoices and other such papers were destroyed by the fire which destroyed his property, and that it was impossible for him to produce the same. Now, if you believe from the evidence that at the time demand was made upon the plaintiff for the production of such original documents that the same were destroyed by fire and the plaintiff was unable to furnish the same, then, and in that event, this action cannot be defeated by reason of his failure to produce such documents, if it was beyond his power so to do.”

This policy required him to produce at such reasonable place as the defendant requested, these documents, and if the originals were destroyed, certified copies. If the defendant company did not require him to produce these at a designated place,

then his failure to produce certified copies would not defeat his recovery. In this connection, I will call your attention to the letters of September 10th and October 9th in which the defendant pleads it demanded these things. As the Court reads those letters, they do not [403] designate any place at which he is to produce them. If there is nothing more in the case than the request in those letters, then his failure to produce copies would not defeat his action, because they did not ask him to produce them at any particular place in those letters.

It has been argued to you that intoxicating liquor is a property that is recognized and protected by the law and is conceded by defendant's counsel in his argument to you. The question to be determined by you is whether this man had an honest loss and the amount of it. You are not to allow any prejudice regarding the character of the goods to prejudice you, either in finding for the plaintiff generally or the amount you award him for damages. You will be controlled by the evidence concerning the market value of the goods which he actually lost which were actually covered by this policy.

There has been some argument about some items covered in his proof of loss that were not covered in the policy. The policy showed that the man was engaged in the saloon business and selling liquors and cigars, and soda waters and other matters that went to make up his saloon business. The merchandise which he was selling were the things that were insured. If he included towels, glasses and matters that he used in the saloon business, if it was so plain

on the face of it that they were not covered by the policy that he could not deceive the insurance company, then the Court instructs you there would be no fraud on his part simply by including items in there that the defendant insurance company would be presumed to know of by going over the form of the policy they used and they could learn that [404] these things were not covered by the policy itself because it was confined to liquors and such things as saloon-keepers would sell

It is the duty of the Court to instruct you as to another important function you are to perform and that is concerning the credibility of the witnesses. As I have instructed you in other cases, you are the sole and exclusive judges of every fact in the case and the weight of the evidence and the credibility of the witnesses. In passing upon these things, it is your right and duty to resort to all of the rules and tests that you have found in your experience as to enable you to determine where the truth lies in human transactions. The law says you should take into consideration the question of the manner and demeanor of the witnesses who appear and testify before you, whether they testify just as you would expect men to testify who are telling you the truth as they saw it and knew it, or whether they were reluctant, hesitating, evasive, equivocated so as to keep back some particular part of their testimony that had to be dragged out of them by repeated questions. On the other hand, you will take into consideration whether a witness has been too willing or too free in testifying, running on, answering

questions that were not asked of him, what the law calls swift witnesses, taking into consideration the place in which the witness was placed, and his experience as would enable him to give you the exact facts of the situation or the incident about which he undertook to tell you. He might not be so situated as to know the exact facts, and his experience where he undertakes to give you information in regard to value, as some of the witnesses have in [405] this case, his experience may not be such as to give great value to his opinion as it might to other witnesses who had greater experience. You will also take into consideration the interest any witness may have in the case as shown, either by the manner in which he testifies or by his relation to the case. You understand in matters of opinion that a man's interest in a case—witnesses have testified concerning their opinion as to value, and other witnesses have testified as to their opinion as to a man's reputation. A man's opinion is so much the creature of his will that you are authorized to and should take that into consideration in measuring the value of his opinions.

If you believe any witness has wilfully testified falsely as to any material matter in the case, you may disregard his evidence entirely, unless it is corroborated by other credible testimony in the case. It is not everything in the case that is material. Those points upon which a case turns are material, but many things are asked about in a lawsuit that are immaterial. If a man does try to keep something back from you or color or distort a matter that

is immaterial, you would not be authorized to reject his testimony. The plaintiff having testified in his own behalf you will apply to his testimony the same rules and tests you would to the other witnesses including his interest in the result of the case.

Two forms of verdict will be submitted to you, one finding for the defendant generally, and one for the plaintiff with a blank in which, if you find for the plaintiff, you will insert the amount at which you fix his damages. When you have agreed upon your verdict, you will notify the Bailiff [406] of that fact and return with your verdict into court.

Jury retires.

[Exceptions to Instructions Given and Refused.]

Mr. COLE.—I wish to make exception in regard to the first instructions given in regard to the presumption of knowledge and the one in regard to the invoices, with regard to the plaintiff producing them in a reasonable place.

Exception allowed.

Mr. COLE.—The defendant excepts to the instruction that failure to produce certified copies of the bills or invoices would not be a defense on the ground and for the reason that no reasonable place was specified in the demand.

Exception allowed.

Mr. COLE.—Defendant also excepts to the following instruction given by the Court: "It is provided by the statute of the State of Washington (sec. 105, Laws of 1911, p. 243), as follows: 'Every insurer who makes insurance upon any building or property or interest therein against loss or damage by fire, and

every agent who issues a fire insurance policy covering on any building or property or interest therein, and every insured who procures a policy of fire insurance upon any building or property or interest therein [407] owned by him, is presumed to know the insurable value of such building or property or interest therein at the time such insurance is effected.' Under this provision of the law I charge you that the defendant insurance company was presumed to know at the time it issued this policy of insurance in the sum of \$5,000 covering the property described in said policy and situated in the buildings described in said policy, the value of said property. If it now claims otherwise the burden of proof rests with the defendant to so show by a fair preponderance of the evidence.'"

Exception allowed.

Mr. COLE.—I think there was some of our requested instructions not given.

The COURT.—Yes, I refused Numbers 3, 4, 6 and 10.

Mr. COLE.—We except to the refusal of the Court to give defendant's requested instructions Numbers 3, 4, 6 and 10.

Exception allowed.

Mr. COLE.—The defendant excepts to the refusal of the Court to give defendant's requested instruction Number 11 reading as follows: The jury is instructed that there is no evidence as to the market value of the case goods and therefore they must be eliminated from the case.

Exception allowed.

The COURT.—It seems to me I did not give one instruction that I intended to give and that was in regard to Mr. Kayler. If you want me to, I will recall the jury and instruct them on that. I switched off from your copy, Mr. Cole, and did not go back to it. If you insist, I will give it. [408]

Mr. COLE.—Yes, I would like to have them instructed on that point.

Jury recalled by Court.

[Additional Instructions.]

The COURT.—Gentlemen of the jury: There were a number of instructions on my desk—too many papers, and I overlooked one and I have called you back to give it to you. (Reading:) “If you find from the evidence that Henry Kayler, who was the defendant’s agent in issuing the policy, assisted the plaintiff or acted on his behalf in making out or submitting the proof of loss, that would be no defense to the plaintiff, as said Henry Kayler was not authorized or empowered by the defendant to make out, or assist the plaintiff in making out his proof of loss.”

“You are further instructed that the said Henry Kayler in assisting the plaintiff in making out and submitting his proof of loss to the defendant, acted as agent for the plaintiff and did not represent the defendant in that connection in any manner whatsoever.”

You understand the fact that Henry Kayler was the man that did make out the proof of loss, that was a circumstance that you would be authorized to consider in determining whether or not the plaintiff is guilty of fraud, whether he would be likely to go and

pick out an agent of the company to prepare a proof of loss.

Mr. BRUNBAUGH.—Exception.

Exception allowed. [409]

WHEREUPON, the jury returned to consider of their verdict, in charge of an officer duly sworn as by law provided.

WHEREUPON, after deliberation said jury returned to the Court a verdict in favor of the plaintiff and against the defendant for the sum of five thousand dollars.

WHEREUPON, on the 30th day of October, 1913, a judgment in favor of the plaintiff and against the defendant on said verdict was entered by the Court in the sum of five thousand dollars, with interest thereon at the rate of six per cent per annum from the 6th day of December, 1912, together with his costs and disbursements thereafter taxed at \$210.50.

It is further certified that the time of the defendant in which to tender its Bill of Exceptions in said cause was from time to time extended to and including the 10th day of January, 1914.

WHEREUPON, on the 15th day of November, 1913, defendant files its motion for a new trial.

WHEREUPON, on the first day of December, 1913, said motion for a new trial was overruled, to which order overruling the motion for a new trial defendant excepted, and the exception was allowed.

**[Order Settling, Certifying and Allowing Bill of
Exceptions.]**

WHEREUPON, the Court being willing to preserve the record in this cause in order that its rulings

may be reviewed for error, if any there be, certifies that the foregoing Bill of Exceptions contains all of the evidence offered or admitted upon the trial of said cause, together with the rulings of the Court thereon and the rulings of the Court in admitting or excluding testimony at said trial; together with the instructions [410] given by the Court, the instructions requested by the defendant and refused, and the exceptions taken to the rulings of the Court and to any instructions given and the exceptions allowed thereon.

It is further certified that there is attached to and made a part of this Bill of Exceptions all of the exhibits offered or admitted at said cause, which are hereto attached, made a part hereof and marked exhibits.

It is further certified that the foregoing Bill of Exceptions contains all proceedings occurring in the trial of the above-entitled cause, and all of the evidence introduced in said cause, and said Bill of Exceptions is hereby made a part of the record herein.

WHEREUPON this Bill of Exceptions is now here settled, certified, signed and allowed this 22d day of January, 1914.

EDWARD E. CUSHMAN,
Judge of Said Court.

The within Bill of Exceptions tendered and filed this 8th day of January, 1914.

FRANK L. CROSBY,
Clerk.

By F. M. Harshberger,
Deputy. [411]

[Plaintiff's Exhibit No. 2 (Telegram).]

Case No. 1297. United States District Court,
Western District of Washington. Wm. Black vs.
Central Nat. Fire Ins. Co.

Form 168.

**THE WESTERN UNION TELEGRAPH
COMPANY.**

Incorporated.

25,000 Offices in America. Cable Service to all the
World.

This Company transmits and Delivers messages
only on conditions limiting its liability, which have
been assented to by the sender of the following mes-
sage.

Errors can be guarded against only by repeating a
message back to the sending station for comparison,
and the Company will not hold itself liable for errors
or delays in transmission or delivery of Unrepeated
Messages, beyond the amount of tolls paid thereon,
nor in any case beyond the sum of Fifty Dollars, at
which, unless otherwise stated below, this message
has been valued by the sender thereof, nor in any case
where the claim is not prestned in writing within
sixty days after the message is filed with the Com-
pany for transmission.

This is an Unrepeated Message, and is delivered by
request of the sender, under the conditions named
above.

BELVIDERE BROOKS,
General Manager.

THEO. N. VAIL,
President.

RECEIVED at 76 Third St., Cor. Oak, Portland,
Ore. Always Open.

CO. BY. 22 Collect. 1 Extra.

Longbeach Wn June 27. 12.

Davenport Dooley & Co,

Portland Ogn.,

Risk covered by policy 590757 burned this morning
prosecuting attorney on spot investigating Total
Loss.

1:11 pm.

P. KAYLER, Agent.

[Endorsed]: "Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Oct. 21, 1913. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy." [412]

Defendant's Exhibit No. 3 [Inventory].

Case No. 1297. United States District Court, Western Dis-
trict of Washington. Wm. Black vs. Cent. Nat. Fire Ins. Co.

INVENTORY ATTACHED TO AND FORMING PART OF
BULK LIQUORS ON HAND—PROOF OF LOSS—UN-
BROKEN PACKAGES.

| | | | |
|-------------------------------|---------|----------------------------------|---------|
| bbl. tapped gallon old. | 5 bbls. | Old Crow Jan. 2, 1906..... | 1000.00 |
| not tapped | 4 bbls. | Cedar Brook McBrayer 1903..... | 800.00 |
| untapped | 3 — | Green River 1902..... | 750.00 |
| | 3 — | Penryck 1904..... | 400.00 |
| bbls. not tapped | 1 — | Old Crow 1899..... | 350.00 |
| gallons raw | 1 — | Fox Mountain 1896..... | 400.00 |
| not tapped | 2 — | A. G. McBrayer single stamp..... | 300.00 |
| bbl. not tapped | 1 — | Wicklow | 125.00 |
| | 1 — | California Port wine..... | 75.00 |
| | 1½ — | Imported Port wine 16 gall..... | 75.00 |
| | 1½ — | California Brandy 16 gall..... | 40.00 |
| | 1½ — | Rum Hudson Bay..... | 50.00 |
| | 4 gall. | Gin Box jug..... | 9.00 |
| | 5 Cases | Whiskey flasks | 20.00 |

| | | |
|---------|---------------------------|--------|
| 2 Bbls. | Clark Bros. whiskey | 214.35 |
| 1000 | Attencion Cigars | 35.00 |
| 500 | Alhambra — | 17.50 |
| 5 bbls. | Bottled beer | 47.50 |
| 900 | Y. & B. Cigars | 81.00 |
| 800 | El Rayo — | 72.00 |
| 500 | Gato — | 45.00 |
| 1600 | Optimos — | 144.00 |
| 500 | Van Dyck — | 45.00 |
| 100 | Carabana — | 9.00 |
| 100 | Loveras — | 9.00 |
| 200 | Carletons — | 12.00 |
| 200 | Eschellés | 12.00 |
| 800 | Manilla — | 40.00 |
| 7 Boxes | Egyptian Cigarettes | 7.00 |
| 1 — | — Luxury | 2.50 |
| 1 — | Pall Mall Imported | 2.50 |

5189.35

[413]

| | | |
|---------|--|--------|
| 5 Cases | Joe Gideon Whiskey | 62.50 |
| 15 — | Joel B. Frazier — and 8 bottles in show case.. | 180.00 |
| 22 — | Roxbury Rye — 7 — — — — | 200.00 |
| 4 — | Guggenheimer — 5 — — — — | 40.00 |
| 4 — | Old Crow Bour- | |
| | bon — 9 — — — — | 50.00 |
| 4 — | Hermitage — — 6 — — — — | 50.00 |
| 4 — | Gibson Rye — 3 — — — — | 40.00 |
| 2 — | Pebble Ford 8 — — — — | 25.00 |
| 2 — | McBrayer 9 — — — — | 27.00 |
| 1 — | Cyrus Noble 4 — — — — | 14.00 |
| 3 — | Atherton 9 — — — — | 40.00 |
| 4 — | W. H. Lacey | 40.00 |
| 2 — | Yellowstone | 25.00 |
| 2 — | Holland Gin Imp. 14 — — — — | 45.00 |
| 2 — | Gordon — — 9 — — — — | 30.00 |
| 2 — | Martelle Brandy — 6 — — — — | 40.00 |

434 *Central National Fire Ins. Co. of Chicago, Ill.*

| | | | | | | | | | | |
|----|---|----------------------|---|---|----|---|---|---|---|-------|
| 2 | — | J. Hennessy | — | — | 9 | — | — | — | — | 36.00 |
| 4 | — | Sazarae (?) | — | — | 3 | — | — | — | — | 50.00 |
| 2 | — | Scotch Whiskey | — | — | 10 | — | — | — | — | 30.00 |
| 1 | — | Old Curio | — | — | | | | | | 20.00 |
| 4 | — | Sloe Gin | | | | | | | | 40.00 |
| 1 | — | Jamaica Rum | — | | | | | | | 14.00 |
| 2 | — | Canadian Club | | | | | | | | |
| | | whiskey | | | 7 | — | — | — | — | 17.50 |
| 1 | — | Mountain Dew Scotch | | | | | | | | |
| | | whiskey | | | | | | | | 14.00 |
| 3? | — | Italian Vermouth | | | | | | | | 24.00 |
| 1 | — | French | — | | | | | | | 9.00 |
| 2 | — | Maraschino Cherries | | | | | | | | 12.00 |
| 2 | — | Rock & Rye | | | | | | | | 14.00 |
| 2 | — | Pineapple Rock & Rye | | | | | | | | 20.00 |

1166.50

[414]

| | | | | |
|---|---------|-------------------------|-------------|-------|
| 1 | Case | Benedictine Imp. | ..... | 35.00 |
| 6 | bottles | Creme de Menthe Imp. | ..... | 12.00 |
| 6 | — | Creme de Cacao | — | 12.00 |
| 1 | — | Picon | — | 2.00 |
| 2 | — | Boonekamp bitters | ..... | 2.00 |
| 2 | Cases | Claret wine | ..... | 9.00 |
| 2 | — | Muscat | — | 9.00 |
| 2 | — | Angelica | — | 9.00 |
| 2 | — | Madeira | — | 9.00 |
| 2 | — | Sherry | — | 9.00 |
| 2 | — | Tokay | — | 9.00 |
| 4 | — | Cresta Blanca—Margaux | ..... | 36.00 |
| 2 | — | Sparkling Burgundy pts. | ..... | 26.00 |
| 2 | — | — | — qts. | 26.00 |
| 3 | — | Mont Rouge—Sauterne | — | 30.00 |
| 2 | — | Mont Rouge—Burgundy | — | 24.00 |
| 6 | Doz. | Beer Glasses | ..... | 12.00 |
| 2 | — | Water | — | 2.75 |
| 5 | — | Whiskey | — | 8.00 |

| | | |
|----------|--------------------|--------|
| 2 Sets | Measures Copper | 12.00 |
| 2 — | Funnels — | 12.00 |
| 8 Doz. | Bar & Glass Towels | 24.00 |
| 8 | Decanters | 8.00 |
| 25 gross | Corks all sizes | 4.00 |
| | | <hr/> |
| | | 353.75 |

[415]

| | | |
|------------|----------------------------------|-------|
| 4 Doz. | 1 gal. Demijohns | 20.00 |
| 5 — | $\frac{1}{2}$ — — | 15.00 |
| 2 — | Champagne glasses | 4.00 |
| 2 — | Port wine — | 3.00 |
| 2 — | Brandy — | 3.00 |
| 2 — | Cocktail — | 3.00 |
| 2 — | Vermouth — | 3.00 |
| 2 — | Benedictine — | 3.00 |
| 3 Cases | Sauterne Van Schuyver | 13.50 |
| 2 — | Old Tom Gin J. W. Nicholson Imp. | 22.50 |
| 2 — | Lash Bitters | 16.00 |
| 1 — | Ginger Brandy | 8.00 |
| 2 — | Virginia Dare Wine | 12.00 |
| 1 — | Lyons Cocktails | 12.00 |
| 1 — | Mumms Champagne | 37.00 |
| 1 Can | Alcohol $4\frac{3}{4}$ gall. | 12.00 |
| 2 Cases | Damiana Bitters | 16.00 |
| 1 — | Stout Imported | 14.00 |
| 1 Drum | Bass's Ale — | 16.00 |
| 2 Bbls. | Budweiser beer, qts. | 25.00 |
| 28 bottles | Hock wine | 11.00 |
| 1 qt. | Jamaica Ginger | 1.50 |
| 1 — | Essence Peppermint | 1.50 |
| 2 Cases | White Rock Mineral Water | 17.00 |
| 1 — | Bartlett — — | 8.50 |
| 1 bbl. | Soda Water | 8.50 |
| 1 — | Ginger Ale | 8.50 |
| 5 — | Weinhard bottled beer | 45.00 |
| 2 Cases | Grape Juice, large size | 9.00 |
| | | <hr/> |

[416]

320.50

436 *Central National Fire Ins. Co. of Chicago, Ill.*

| | |
|---|----------|
| 1 bbl. Mellwood Whiskey about 15 gall. | \$ 37.50 |
| 1 keg. " 3 — | 7.50 |
| 1 keg Old Crow 2½ — | 6.25 |
| 20 bottles various liquors on back bar..... | 25.00 |
| 126 — in show cases aver. 1.25 p. bot. | 157.50 |
| 6 broken boxes cigars, about 300 cigars, aver. 75.00 per M. | 22.50 |
| Cordials, mineral waters, soda waters, beer and ales in back bar | 30.00 |
| 20 gall. Blackberry brandy..... | 50.00 |
| 10 — Dry Sherry at 1.25 gal..... | 12.50 |
| | <hr/> |
| | 348.75 |

Recapitulation:

| | |
|--------------|---------|
| Sheet 1..... | 5189.35 |
| — 2..... | 1166.50 |
| — 3..... | 353.75 |
| — 4..... | 320.50 |
| — 5..... | 348.75 |
| | <hr/> |
| | 7378.85 |

[417]

For further information in regard to value of the different whisky would refer you to The Internal Revenue officers at Tacoma, also Mr. Locke of the firm of Greenbaum Bros., Louisville, Kentucky, residing at 1130 Hawthorne Ave, Portland, Julius Friedman, of Blumaur & Hoch, & Mr. Adams of Fleckenstein & Son, Frank Botefuhr and Julius Wellman of Brown Foreman & Co. As to cigars I bought of Mason Ehrman & Co, Gunst & Co, Hart Cigar Co, Taylor of Astoria representing Schbacher & Co. If necessary will furnish sworn affidavits from above people & other prominent persons who are familiar with my stock as I wish you to under-

stand that I desire the fullest investigation. That I have nothing to conceal & can substantiate everything that is stated in above inventory

Remaining

Yours respectfully,

WM. BLACK.

* * * * *

As per inventory Attached Thereto.

(Endorsed) :

Claim No.

PROOF OF LOSS.

Central National Insurance Co.

Of

Chicago Ill.

Assured—Wm. Black.

Loss payable to Wm. Black.

Locality—Long Beach, Wash.

Issued at Long Beach, Wash., Agency. [418]

Policy No. 590757. Amount, \$5000.

Total Am't of Insurance, \$5000.

Total Amount of Loss, \$7378.85.

Am't Loss under this Policy, \$5000.00.

Amount Awarded, —\$.

Date of Fire June 27, 1912.

Proofs Received at Gen'l Office. 190. . . .

Date of payment. 190. . . .

Adjuster.

No. of Policy 590757. Amt. of Policy \$5000.00.

PROOF OF LOSS

To the

CENTRAL NATIONAL FIRE INSURANCE
COMPANY

Of Chicago, Ill.

By Your Policy of Insurance Numbered 590757 issued at your Agency at Long Beach, Wash commencing at 12 o'clock noon, on the 17th day of June, 1912, and terminating at 12 o'clock noon, on the 17th day of June 1913 you insured Wm. Black against loss and damage by fire to the amount of Five Thousand Dollars, according to the terms and conditions of said Policy, the written portion thereof together with an exact copy of all endorsements assignments and transfers, being as follows, viz:

MERCHANDISE FORM.

\$5000.00 On his stock of merchandise, consisting principally of wines, liquors soda & mineral waters beer & cigars and all other goods, wares and merchandise not more hazardous kept for sale by assured, while contained in two story shingle roofed frame building and adjoining and communicating additions thereto, while occupied as saloon and situate Lot 6 Blk 6 Tinkers north [419] addition to Long Beach Pacific County Wash

\$ nil On furniture and fixtures while contained in said building.

\$ nil Other concurrent insurance permitted.

POWDER AND KEROSENE. — Permission granted to keep for sale not to exceed fifty pounds of gunpowder and five barrels of kerosene oil, the latter to be of not less than the United States standard of

110 degrees, neither to be handled or sold by artificial light.

ELECTRIC LIGHTS.—Permission for electric lights, it being agreed that all wires shall be doubly coated with approved insulating material, and protected where they enter buildings, by porcelain or hard rubber insulators, and shall also have fusible cut-offs.

LIGHTNING CLAUSE.—This policy shall cover any direct loss or damage caused by lightning, (meaning thereby the commonly accepted use of the term lightning, and in no case to include loss or damage by cyclone, tornado or windstorm,) not exceeding the sum insured, nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy: **PROVIDED**, however, if there shall be any other insurance on said property this company shall be liable only pro-rata with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not; and provided further that, if dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this company shall not be liable for any loss or damage to such property resulting from any electrical injury or disturbance, whether from artificial or natural causes, unless fire ensues, and then for the loss by fire only. Attached to and forming a part of Policy No. 590757 of the Central National Fire Insurance Co., of Chicago, Illinois.

HENRY KAYLER, Agent. [420]

Loss, if any, payable to WM. BLACK.

The total insurance on said property, or any part

thereof, at the time of the fire, including this policy, was Five Thousand DOLLARS.

A fire occurred on the 27th day of June, A. D. 1912, at about the hour of 1:30 o'clock A. M., by which the property insured was destroyed, or damaged, as herein set forth, and which originated as follows: Cause unknown.

THE CASH VALUE of each specified subject at the time of the FIRE, and the actual LOSS and DAMAGE thereon by said fire as ascertained by appraisal, or by mutual agreement, and the whole amount of Insurance thereon were as follows:

| | Property. | Sound Value. | Total | Total | Total | Insurance | Claimed of |
|------|----------------|--------------|-------|------------|------------------------|------------------|--------------------|
| | Item of Policy | 8000. | Loss. | Insurance. | Claim Under Insurance. | by this Company. | this Insurance Co. |
| 1st. | " " | | 8000. | 5000. | 5000. | 5000.00 | 5000.— |
| 2d | " " | | | | | | |
| 3d | " " | | | | | | |
| 4th | " " | | | | | | |
| 5th | " " | | | | | | |
| 6th | " " | | | | | | |
| 7th | " " | | | | | | |
| 8th | " " | | | | | | |
| 9th | " " | | | | | | |
| | Total | _____ | | | | | |

And the insured claim of the above-named COMPANY, by reason of said loss, damage, and Policy of Insurance, the sum of Five Thousand Dollars, in full of their proportion of said loss.

The property insured belonged exclusively to WM. BLACK and no other person or persons had any interest therein.

If the loss is on building, state whether Real Estate is owned in fee simple or held on lease.

Fee simple. [421]

State the nature and amount of incumbrance at the time of the firenone.

The total value of property saved is \$. none as per statement attached hereto, marked Schedule

The building insured, or containing said property, was occupied in its several parts by the parties hereinafter named and for the following purposes, to-wit: Wm. Black, saloon and for no other purposes whatever.

The said fire did not originate by any act, design, or procurement on part of assured, nor on the part of anyone having any interest in the property insured, or in the said Policy of Insurance; nor in consequence of any fraud or evil practice done or suffered by said assured, that nothing has been done by or with the privity or consent of assured to violate the conditions of the Policy, or to render it void; and then no articles are mentioned herein but such as were in the building damaged or destroyed, and belonging to, and in the possession of the said insured at the time of the said fire; that no property saved has been in any manner concealed, and that no attempt to deceive the said Company as to the extent of said loss or otherwise, has in any manner been made. Any other information that may be required will be furnished on call, and considered a portion of these proofs.

It is furthermore understood and agreed that all bills, invoices, schedules and statements made by the assured, and attached to this Proof of Loss, are to be incorporated into this proof, and are hereby duly sworn to and made a part thereof.

The furnishing of this blank to assured, or making up of proofs by Adjuster for Company, is not to

be considered as a waiver of any rights of the Company.

Witness my hand at Long Beach, Wash., this 22d day of August, 1912.

WILLIAM BLACK. [422]

Personally appeared Wm. Black, signer of the foregoing Statement who made solemn oath to the truth of the same, and that no material fact is withheld that the said Company should be advised of, before me this 22nd day of August, 1912.

[Notarial Seal] HENRY KAYLER,
Notary Public in & for the State of Washington, Re-
siding at Long Beach, Wash.

NAME OF COMPANY—CENTRAL NATIONAL No. of Policy 590757.

| | | | | | | | | | |
|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|---------------------------|
| Loss on 1st Item. | Loss on 2nd Item. | Loss on 3rd Item. | Loss on 4th Item. | Loss on 5th Item. | Loss on 6th Item. | Loss on 7th Item. | Loss on 8th Item. | Loss on 9th Item. | Total. |
| \$..... | \$..... | \$..... | \$..... | \$..... | \$..... | \$..... | \$..... | \$..... | |
| First Item. | Second Item. | Third Item. | Fourth Item. | Fifth Item. | Sixth Item. | Seventh Item. | Eighth Item. | Ninth Item. | |
| Insures. | Insures. | Insures. | Insures. | Insures. | Insures. | Insures. | Insures. | Insures. | Insurance by each Company |
| 5000. | | | | | | | | | by each Company |
| Pays. | Pays. | Pays. | Pays. | Pays. | Pays. | Pays. | Pays. | Pays. | ..... |
| | | | | | | | | | |
| | | | | | | | | | Loss under each Company. |
| | | | | | | | | | |

As per inventory attached hereto.

“Filed in the U. S. District Court, Western District of Washington, Southern Division. Oct. 21, 1913.
 Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [423]

Plaintiff's Exhibit No. 4 [Bill of Lading].

Case No. 1297. United States District Court,
Western District of Washington, Wm. Black vs.
Central Nat. Fire Ins. Co.

“STRAIGHT BILL OF LADING—ORIGINAL—
NOT NEGOTIABLE.

Received, subject to the classification and tariffs in
effect on the date of issue of this Original
Bill of Lading.

FROM CLARKE BROS. & CO.

Distillers.

* * * * *

at Peoria, Ill. Apl 30 12 Shippers No. 12075.

) O Railroad Company.

P. A. Hill & Co.

* * * * *

Consigned to Wm. Black

Destination Long Beach, State of Washington,

County of

Route No Pac

| No. Pack- ages. | Description of Articles and Special Marks. | Weight Subject to Correction. | Class or Rate. |
|--------------------|---|----------------------------------|-------------------|
| 2 | Brl Wky 751447-8 | 838 | 260 |

W. A. BAITTU. (?)

‘This is to certify that the above articles in this
shipment are properly described, packed and marked,
and that all necessary labels have been attached to
packages, as required by General Notice.’

.....R. R.

CLARKE BROS. & CO.

By SINCLAIR.” [424]

[Endorsed]: Filed in the U. S. District Court, Western Dist. of Washington. Southern Division. Oct. 21, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [425]

Defendant's Exhibit "A-8" [Inventory].

Case No. 1297. United States District Court, Western District of Washington. Wm. Black vs. Cent. Nat. Fire Ins. Co.

COPY.

| | | | |
|------------------------------|---------|--------------------------------|---------|
| l. tapped llon | 5 bbls. | Old Crow Jan. 2, 1906..... | 1000.00 |
| tapped tapped | 4 bbls. | Cedar Brook McBrayer 1903..... | 800.00 |
| ls. not ed llons rn | 3 — | Green River 1902..... | 750.00 |
| | 3 — | Penryck 1904..... | 400.00 |
| | 1 — | Old Crowe 1899..... | 350.00 |
| l. not ed | 1 — | Fox Mountain 1896..... | 400.00 |
| | 2 — | McBrayer single stamp..... | 300.00 |
| | 1 — | Wicklow | 125.00 |
| | 1 — | California Port wine..... | 75.00 |
| | 1½ bbl. | Port wine imp. 16 gall..... | 75.00 |
| | 1½ — | California Brandy | 40.00 |
| | 1½ — | Rum | 50.00 |
| | 4 gall. | Gin Box jug..... | 9.00 |
| tapped | 5 Cases | Whiskey flasks | 20.00 |
| | 2 Bbls. | Clark Bros. whiskey | 214.35 |
| | 1000 | Attencion Cigars | 35.00 |
| | 500 | Atherton | 17.50 |
| | 5 bbls. | Bottled beer | 47.50 |
| | 900 | Y. & B. Cigars | 81.00 |
| | 800 | El Rayo | 72.00 |
| | 500 | Gato | 45.00 |
| | 1600 | Optimos | 144.00 |
| | 500 | Van Dyck | 45.00 |
| | 100 | Carabana | 9.00 |
| | 100 | Loveras | 9.00 |
| | 200 | Carlebon | 12.00 |
| | 200 | Eschelles | 12.00 |

446 *Central National Fire Ins. Co. of Chicago, Ill.*

| | | | |
|---------|---------------------|-----------------|-------|
| 800 | Manillas | ..... | 40.00 |
| 7 Boxes | Egyptian Cigarettes | ..... | 7.00 |
| 1 — | — | Luxury | 2.50 |
| 1 — | — | Pall Mall | 2.50 |

[426]

5189.35

COPY.

| | | |
|---------|--|--------|
| 5 Cases | Joe Gideon Whiskey 12.50 per case..... | 62.50 |
| 15 — | Joel B. Frazier — 12 | 187.00 |
| 22 — | Roxbury Rye — | 200.00 |
| 4 — | Guggenheimer —..... | 40.00 |
| 4 — | Old Crow Bourbon —..... | 50.00 |
| 4 — | Hermitage — — | 50.00 |
| 4 — | Gibson Rye — | 40.00 |
| 2 — | Pebble Ford | 25.00 |
| 2 — | McBrayer | 29.00 |
| 1 — | Cyrus Noble | 14.00 |
| 3 — | Atherton | 40.00 |
| 4 — | W. H. Lacey | 40.00 |
| 2 — | Yellowstone | 25.00 |
| 2 — | Holland Gin Imp. | 45.00 |
| 2 — | Gordon — Imp. | 30.00 |
| 2 — | Martelle Brandy | 40.00 |
| 2 — | Hennessy | 36.00 |
| 2 — | Sazarae (?) | 50.00 |
| 2 — | Scotch Whiskey..... | 30.00 |
| 1 — | Curio — | 20.00 |
| 4 — | Sloe Gin | 40.00 |
| 1 — | Jamaica Rum | 14.00 |
| 2 — | Canadian Club | 17.50 |
| 1 — | Mountain Dew Scotch Whiskey..... | 14.00 |
| 3? — | Italian Vermouth | 24.00 |
| 1 — | French — | 9.00 |
| 2 — | Maraschino Cherries | 12.00 |
| 2 — | Rock & Rye | 14.00 |
| 2 — | Pineapple Rock & Rye | 20.00 |

[427]

1166.50

COPY.

| | | |
|-----------|---------------------------------|-------|
| 1 Case | Benedictine Imp..... | 35.00 |
| 2 — | Claret wine | 9.00 |
| 2 — | Muscat — | 9.00 |
| 2 — | Angelica — | 9.00 |
| 2 — | Madeira — | 9.00 |
| 2 — | Sherry — | 9.00 |
| 2 — | Tokay — | 9.00 |
| 4 — | Margaux Cresta Blanca..... | 36.00 |
| 2 — | Sparkling Burgundy pts. | 26.00 |
| 2 — | — — qts. | 26.00 |
| 3 — | Mont Rouge Spark. Sauterne..... | 30.00 |
| 2 — | — — — | 24.00 |
| 6 bottles | Creme de Menthe Imp..... | 12.00 |
| 6 — | Creme de Cocoa — | 12.00 |
| 1 — | Picon | 2.00 |
| 2 — | Boonekamp bitters | 2.00 |
| 6 Doz. | Beer Glasses | 12.00 |
| 2 — | Water — | 2.75 |
| 5 — | Whiskey — | 8.00 |
| 2 Sets | Measures Copper | 12.00 |
| 8 Doz. | Bar & Glass Towels..... | 24.00 |
| 8 | Decanters | 8.00 |
| 25 gross | Corks all sizes..... | 4.00 |

 353.75

[428]

COPY.

| | | |
|---------|-----------------------------|-------|
| 4 Doz. | 1 gal. Demijohns | 20.00 |
| 5 — | $\frac{1}{2}$ — — | 15.00 |
| 2 — | Champagne glasses | 4.00 |
| 2 — | Port wine — | 3.00 |
| 2 — | Brandy — | 3.00 |
| 2 — | Cocktail | 3.00 |
| 2 — | Vermouth — | 3.00 |
| 2 — | Benedictine — | 3.00 |
| 3 Cases | Sauterne Van Schuyver | 13.50 |

WM. BLACK FIXTURES contained in saloon building, Lot 6, Blk. 6, Tinkers N. Add. Long Beach, Wash., June 27th, 1912.

| | |
|--|------------|
| Bar, back bar & work board..... | 400.00 |
| Glassware..... | 100.00 |
| 40 chairs..... | 60.00 |
| Cash register.. | 225.00 |
| Safe | 100.00 |
| Pictures..... | 150.00 |
| 3 tables.... | 25.00 |
| Desk & office furniture including mission chairs | 50.00 |
| Linoleum..... | 75.00 |
| Clock | 25.00 |
| Racks | 10.00 |
| Lighting plant & piping..... | 100.00 |
| Pump & piping and fixtures..... | 100.00 |
| Faucets, brass | 25.00 |
| Show cases | 100.00 |
| Stove & piping..... | 15.00 |
| Brass rail | 22.00 |
| Patents corkscrew | 12.00 |
| “ lemon squeezer | 8.00 |
| Copper measure & funnels..... | 25.00 |
| Check stamping machine..... | 10.00 |
| Silverware, such as spoons & shakers..... | 25.00 |
| Ornaments | 10.00 |
| Elk horns | 1722 50.00 |
| <hr/> | |
| Tools | 58.00 |
| Books, various—Enc. Brit., Chas. Dickens.. | 50.00 |
| Hydrometer & tester. | 12.00 |

450 *Central National Fire Ins. Co. of Chicago, Ill.*

| | |
|--|---------------|
| Portieres | 10.00 |
| Curtains | 2.50 |
| Clothing, i. e., bar coats & vests & towels..... | 50.00 |
| Step ladder | 5.00 |
| Patent window cleaners, mops, brooms, pails. | 5.00 |
| Umbrella, gold headed..... | 5.00 |
| Cigar lighting machine & match boxes..... | 5.00 |
| Dishes | 5.00 |
| 12 spittoons | 1941.50 12.00 |
| [431] | |

COPY.

Policy 2661130.

Furniture & Fixtures—New Hampshire.

| | |
|---|--------|
| Work board | 75.00 |
| Bar & back bar & rail..... | 300.00 |
| Cash Register | 225.00 |
| Linoeum..... | 50.00 |
| Safe | 50.00 |
| Office Furniture | 50.00 |
| Pictures | 50.00 |
| Elk Horns | 50.00 |
| Chairs | 25.00 |
| Tables | 20.00 |
| Stove | 20.00 |
| Lighting plant | 130.00 |
| Clock | 25.00 |
| Show cases | 75.00 |
| Ornaments | 10.00 |
| Spittoons | 10.00 |
| Portieres | 25.00 |
| Stand Carved Eagle..... | 50.00 |
| <i>Ponograph & fixtures—records (75).....</i> | 100.00 |

| | |
|--|---------|
| Liquor racks | 10.00 |
| 2 Fancy Kegs | 10.00 |
| 1 Cork Puller | 12.00 |
| 1 Lemon Squeezer | 8.00 |
| 1 Hydrometer & tube..... | 10 00 |
| 2 Keg stands | 5.00 |
| Buckets, mops, window cleaners & broom.. | 5.00 |
| Water system & piping | 100.00 |
| | <hr/> |
| | 1500.00 |

[432]

Patent brush.

1 Phonograph with 75 *Peckords*.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 23, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [433]

Defendant's Exhibit "B" [Bank Statement].

Case No. 1297. United States District Court,
Western District of Washington. William Black
vs. Central Nat. Fire Ins. Co.

Please examined and report promptly.

Deposits—Wm. Black—Year 1912—in account with
**THE FIRST NATIONAL BANK OF ASTORIA,
OREGON.**

| Dr. | | Cr. |
|-----|----------------|---------|
| | 1912 | |
| | Jan. 1 Balance | 1116.01 |
| | 5 Cash | 119.30 |
| | 6 " | 21.50 |
| | 11 " | 28.33 |
| | 24 " | 90.10 |
| | 30 " | 100.30 |
| | Feb. 6 " | 40. |
| | 12 " | 104. |
| | 17 " | 31. |
| | 21 " | 10.60 |
| | 24 " | 50. |
| | 24 Note | 1000. |
| | 26 Cash | 16.65 |
| | 29 " | 57.13 |
| | | 308.38 |
| | Mar. 5 " | 73.15 |
| | 7 " | 20.00 |
| | 7 " | 84.50 |
| | 12 " | 18. |
| | 16 " | 32. |
| | 21 " | 44.15 |

vs. William Black. 455

28 " 53.75

320.55

Apr. 5 " 84.36

9 " 67.50

10 " 40.

15 " 65.58

17 " 49.

20 " 11.35

23 " 72.25

26 " 26.80

27 " 50.

466.84

May 2 " 179.70

3 " 71.10

10 " 70.35

14 " 65.56

18 " 100.

22 " 26.50

23 " 47.50

27 " 20.

31 " 53.25

633.96

[436]

1912

June 3 Cash 72.25

7 " 81.50

14 " 39.90

24 " 180.00

373.65

July 5 " 61.50

9 " 160.

12 " 47.50

| | | | |
|------|----|---|-------|
| | 17 | “ | 55. |
| | 20 | “ | 960. |
| | 26 | “ | 10. |
| Aug. | 7 | “ | 61.50 |
| | 9 | “ | 14.65 |
| Sep. | 10 | “ | 61.50 |
| Oct. | 10 | “ | 61.50 |
| Nov. | 8 | “ | 54.50 |
| Dec. | 11 | “ | 61.50 |

[Endorsed]: “Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [437]

Defendant's Exhibit “C” [Letter].

Case No. 1297. United States District Court, Western District of Washington. William Black vs. Central Nat. Fire Ins. Co.

WM. BLACK,
LONG BEACH, WASH.

July 3rd, 1912.

Davenport Dooley Co.

Portland,

Or.

Dear Sir

I have *meet* with a loss on June 27 *with doubtles* you have been notified. Now I wish you to send adjuster or *representative* as I wish to Clean up premises in order to rebuild.

Yours Respect.

WM. BLACK.

[Endorsed]: Received Jul. 5, 1912. Davenport-Dooly Co.

“Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [438]

Defendant's Exhibit "D" [Letter].

Case No. 1297. United States District Court, Western District of Washington. William Black vs. Central Nat. Fire Ins. Co.

WM. BLACK,
LONG BEACH, WASH.

Sept. 5th, 1912.

W. G. LOYD

Adjuster Fire losses
Portland Or.

Dear sir

Yours letter received, and in reply will say I will give you until the 10 of Sept to adjust this my claim. You can suit your *pleshure* about it. I will then *comense* suit for its *colection*.

Truly yours

WM. BLACK.

[Endorsed]: “Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.” [439]

Defendant's Exhibit "E" [Letter].

Case No. 1297. United States District Court,
Western District of Washington. William Black
vs. Central Nat. Fire Ins. Co.

WM. BLACK,
LONG BEACH, WASH.

Aug 29th 1912.

Davenport-Dooly Co; Portland Or

Agents of Central National Fire Insurance Comp.
of Chicago Ill.

Dear sir

I hold Policy No. 590757 on this Company and
have been awaiting for a settlement of policy since
June 27 and think I have been treated *veary roten*;
have had no one to come here to *ajust* my loss or give
me any information. Now I demand an *emeadite*
settlement or I will at once take steps to *colect* it.

Yours truly,

WM. BLACK.

please let me *here* from you at once.

[Endorsed]: Received Aug. 30, 1912. Davenport-
Dooly Co.

“Filed in the U. S. District Court, Western Dist.
of Washington, Southern Division. Oct. 22, 1913.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy.” [440]

Defendant's Exhibit "F" [Letter].

Case No. 1297. United States District Court,
Western District of Washington. Wm. Black vs.
Cent. Nat. Fire Ins. Co.

WM. BLACK,
LONG BEACH, WASH.

Sept. 12th 1912.

Mr. W. G. Lloyd,
Adjuster Fire losses,
Portland, Or.

Dear Sir

Your letters of Sept. 10th have been *referred* to my
Lawyers.

Yours truly,
WM. BLACK.

[Endorsed]: "Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy." [441]

Defendant's Exhibit "G" [Letter].

Case No. 1297. United States District Court,
Western District of Washington. Wm. Black vs.
Central Nat. Fire Ins. Co.

WM. BLACK,
LONG BEACH, WASH.

Long Beach, Wash., Aug. 23, 1912.

Mr. Lloyd,
Portland, Ore.

Dear Sir

Enclosed please find Proofs of Loss as requested.

Yours respect'y,
WM. BLACK.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [442]

Defendant's Exhibit "H" [Letter].

Case No. 1297. United States District Court, Western District of Washington. Wm. Black vs. Central Nat. Fire Ins. Co.

Long Beach, Wash., Aug. 19th, 1912.

Mr. W. G. Lloyd,
Portland, Ore.,

Dear Sir

I have been waiting since June 27 for you to come down & inspect the site of my building that was burnt on that date. I wish to clear up the rubbish from place but do not want to touch anything till you have been it. Mr. Whalley of the New Hampshire Ins. Co. refers me to you hence this letter.

I wish you would make it a point to come as soon as possible.

Yours respect'y,

WM. BLACK,

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [443]

Defendant's Exhibit "I" [Letter].

Case No. 1297. United States District Court,
Western District of Washington. Wm. Black vs.
Cent. Nat. Fire Ins. Co.

WM. BLACK,
LONG BEACH, WASH.

Oct. 11th, 1912.

W. G. Lloyd,
Portland, Ore.

Dear Sir

What has struck you? I have complied with the law. Send you with proof of loss *witch* you refuse to receive as such and claimed in your letter that it was a memorised list. As far as I am or was concerned that letter closed the matter between you and me. I have been treated *roten* by you. You have never called on me and I never saw you. This has been my first fire and I have had no *exsperince* in *maters* of this kind and want no more. I *inshured* *payed* my money and have *meet* with a loss and want mine and I am going to have it; and take this from me I have furnished you with every thing covering this my loss.

WM. BLACK.

Say you had better save your stamps I will get them just the same with a 2 cent stamp or do you take me for a farmer.

[Endorsed]: "Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy." [444]

Defendant's Exhibit "J" [Letter].

Case No. 1297. United States District Court,
Western District of Washington. Wm. Black vs.
Cent. Nat. Fire Ins. Co.

October, 9th, 1912.

Mr. Wm. Black,
Long Beach, Wash.

Dear Sir:—

On September 10th, 1912, we wrote you requesting further data and information relative and supplemental to papers filed by you under policy No. 590757 issued to you by the Central National Fire Insurance Co.

To this you replied on September 12th, 1912, that you had referred the matter to *you* Lawyers, and since which time nothing further has been heard. If you intend making any claim, we notify you that you comply with our request of September, 10th, 1912, above referred to.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [445]

Defendant's Exhibit "K" [Letter].

Case No. 1297. United States District Court,
Western District of Washington. Wm. Black vs.
Central Nat. Ins. Co.

August 31st, 12.

Mr. Wm. Black,
Long Beach, Wash.

Dear Sir:—

I am in *reciept* of your favor of the 23rd, enclosing

papers purporting to be proofs of loss under policy No. 590757 and policy No. 2661130 issued to you by the Central National Fire Ins. Co. and the New Hampshire Insurance Co. The same will be given *consideration* and you will be advised further at the earliest possible moment.

Very Truly Yours,

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [446]

Defendant's Exhibit "L" [Letter].

Case No. 1297. United States District Court, Western District of Washington. Wm. Black vs. Central Nat. Fire Ins. Co.

September 10th, 1912.

Mr. Wm. Black,
Long Beach, Wash.

Dear Sir:—

We are in *reciept* of your favor of August 23rd, enclosing papers purporting to be proofs of loss under policy No. 590757 issued to you by the Central National Fire Insurance Company, making claim for loss by fire alleged to have occurred on June 27th, 1912.

The said papers can not be accepted as satisfactory, for the following among other reasons which may subsequently be made to appear.

The list of articles *inumerated* is only a *mermorized* list and also contains articles which are not items of stock.

The amount set *fourth* in said list as representing the value are grossly in excess of the true sound value of said articles, alleged to have been destroyed.

Under the terms and conditions of your policy you are required to exhibit the last authentic inventory taken of your stock or a certified copy thereof. You will also supply bills of purchases of stock since the last said inventory, or if said bills of purchases have been destroyed then certified copies of the original bills.

You are *alos* required to supply a record of your sales made of stock since the date of inventory above *reffered* to.

The said papers cannot therefore be accepted as satisfactory [447] and are held subject to your order.

This company hereby neither admits nor denies any liability to you.

Very Truly Yours,

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [448]

Defendant's Exhibit "M" [Letter].

Case No. 1297. United States District Court, Western District of Washington. Wm. Black vs. Central Nat. Fire Ins. Co.

August 20th, 1912.

Mr. Wm. Black,
Long Beach, Wash.

Dear Sir:—

I have your letter of August 19th, relative to pur-

ported claim by reason of fire and in reply I beg to advise as follows.

If you have a claim under Pol. No. 590757 issued to you by the Central National Fire Ins. Co. of Chicago, Ill., and Pol. No. 2661130 issued to you by the New Hampshire Fire Ins. Co. of Manchester, N. H., both of which Companies I represent and on behalf of said Companies I desire to call *you* attention to the terms and conditions as set forth in lines from 67 to 112 inclusive.

You are hereby required to submit proofs of loss as set forth and in accordance with instructions thereby given in said policies, within sixty days of the fire.

Upon above compliances I will give the matter attention.

The said Insurance Companies, above referred to, hereby neither admit nor deny liability.

Very Truly Yours.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 22, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [449]

Defendant's Exhibit "Y" [Bills, etc.].

Case No. 1297. United States District Court,
Western District of Washington. Wm. Black vs.
Cent. Nat. Fire Ins. Co.

(Parts only of this exhibit, being bill of 1908, Green
River Whiskey, Bill of June 26, 1909, Old Crow,
and Statement.)

Sol. Blumauer.

Eugene Hoch.

BLUMAUER & HOCH.

Wholesale Dealers and Importers in Wines and
Liquors.

No. 105-107 12th Street

Wholesale.

Importers.

Liquors & Cigars.

Blumauer & Hoch.

Sole Agents for

Anheuser-Busch Budweiser Beer.

Dodson Extra Special Whiskey.

Old Certificate Whiskey.

O. K. Home Club.

Coronet Dry Gin.

Cruse Fils Clarets & Sauternes.

Johnson's Clarets and Sauternes.

Deinhard and Leiden Rhine Wines.

Beaver Brand Wines.

White Rock Mineral Water.

Terms.

"Exhibit A."

PORTLAND, OR., April 2, 1918.

Sold to Wm. Black.

Ilwaco, Wn.

| | |
|-----------------------|-------|
| 5 Barrels Green River | 36.09 |
| | 36.89 |
| | 35.15 |
| | 36.76 |
| | 37.02 |

181.91 gal. @ 2.75 500.25

5 Barrels Pensvick Rye 39.25
 39.74
 39.74
 39.11
 38.22

196.06 gal. @ 2.60 509.75

\$1010.00

DUPLICATE. [450]

* * * * *

Sol. Blumauer. Eugene Hoch.

BLUMAUER & HOCH.

Wholesale Dealers and Importers in Wines and
Liquors.

No. 105-107 12th Street

Wholesale.
 Importers.
 Liquors & Cigars.
 Blumauer & Hoch.
 Sole Agents for
 Anheuser-Busch Budweiser Beer.
 Dodson Extra Special Whiskey.
 Old Certificate Whiskey.
 O. K. Home Club.
 Coronet Dry Gin.
 Cruse Fils Clarets & Sauternes.
 Johnson's Clarets and Sauternes.
 Deinhard and Leiden Rhine Wines.
 Beaver Brand Wines.
 White Rock Mineral Water.
 "Exhibit A."
 Terms.

PORTLAND, OR., June 26, 1909.

Sold to Wm. Black.

Ilwaco, Wn.

5 Barrels Old Crowe 201.93 gallons @ 2.65 \$535.10

(Shipped direct by W. A. Gaines & Co., Frankfort,

Ky.)

DUPLICATE. [451]

STATEMENT.

Interest charged after maturity.

Phones, (Main 211,

(A 6004 A 6005.

Portland, Oregon, Apr. 24, 1913 191

Mr. Wm. Black,

Long Beach, Wn.

IN ACCOUNT WITH

BLUMAUER & HOCH.

Wholesale dealers in and Importers of

Imported and Domestic

Wines and Liquors

Sole Agents Old Kentucky Home Club Whiskey and

Dodson's Extra Special Whiskey.

"Exhibit A" 105-107 TWELFTH STREET.

| | | |
|----------|----------------------|---------|
| 1908. | To Balance. | |
| Apr. 2. | To Mdse., Ilwaco, Wn | 1010.00 |
| " " | " " | 96.35 |
| July 25. | | 40.50 |
| Sept. " | | 44.25 |
| 26. | freight | 1.65 |
| Nov. 30. | | 148.25 |
| Dec. 1. | freight | 3.05 |
| 1909. | | |
| Feb. 2. | | 166.50 |
| 3. | freight | 3.50 |
| Apr. 9. | | 46.25 |
| 10. | freight | 2.80 |
| June 11. | | 525.70 |
| 14. | freight | 19.35 |
| 26. | | 535.10 |

CREDIT:

1908.

Sept. 22. Cash 1146.85

Nov. 19. 25 Bbl. Certificate 1029.37

1909.

Sept. 25. Cash 200.00

Nov. 30. " 100.00

1910.

April 26. " 167.00

" Dicit. .03 2643.25

[452]

Defendant's Exhibit "X" [Invoice].

(Last page only)

Case No. 1297. United States District Court,
Western District of Washington. Wm. Black vs.
Cent. Nat. Fire Ins. Co.

* * * * *

Invoice.

Established 1870. Order No.

BROWN-FORMAN CO.

Incorporated.

KENTUCKY WHISKIES.

Registered Distillery No. 14.

ST. MARY'S, KY.

LOUISVILLE, KY., Jan. 25, 1911.

Sold to Wm. Black,

Address, Long Beach, Wash.

Salesman—Waldman.

TERMS: 90 days or 4% cash 30 days

Shipped Via F. O. B.

Form 7

We hereby guarantee that the articles invoiced

470 *Central National Fire Ins. Co. of Chicago, Ill.*

below are not adulterated, or misbranded, within the meaning of the National Foods and Drugs Act of June 30, 1906.

BROWN-FORMAN CO. (Inc.)

1 Bbl Fox Mountain proof gals 34.99 6 50 162.43

DUPLICATE

Exhibit E.

Important Notice.

For the protection of our customers, all shipments should be weighed at the station, and if under weight, should be endorsed on the freight bill by the Railroad Company's Agent. One case Quarts Weighs 50 lbs. One case Pints Weighs 52 lbs. One case fives weighs 42 lbs. One case Half Pts. weighs 57 lbs.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 23, 1913. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [453]

Assignment of Errors.

The defendant in this action, in connection with its petition for writ of error, makes the following assignment of errors, which it avers occurred at the trial of the cause, to wit:

I.

Said District Court erred in overruling the objections of the defendant to the following question propounded by counsel for plaintiff to the witness, S. A. Madge:

Q. Just tell the jury what kind and character of stock of liquors Mr. Black kept on hand.

To which counsel for the defendant objected on the

ground that it was not close enough unless shown to be immediately preceding the fire, which objection was overruled, to which ruling the defendant then and there excepted, which exception was allowed. Said witness having previously testified that he resided at Olympia; had been in the insurance business for about five years; had been deputy collector of internal revenue; had not been in Black's saloon since 1908.

II.

Said District Court erred in overruling defendant's motion to strike out the testimony of the witness, S. A. Madge, to which ruling of the Court defendant excepted, and which exception was then and there allowed; said witness having previously given the following testimony:

I ceased to be deputy collector of internal revenue just about five years ago. I was in his place of business at Long Beach once or twice before I went out of the service. It was about five years ago. I was in his place of business at Ilwaco, also in his place of business after he moved to Long Beach [454] I visited his place of business in my official capacity as deputy collector of internal revenue. The stock of goods that he carried in Ilwaco, I remember very distinctly. I do not remember so distinctly about the stock of goods at Long Beach after he moved up there, but my impression is that it was the same stock of goods as the saloon in Ilwaco. It was a small town, and I was impressed with the stock of goods that he carried, because it was so far beyond the class of goods that are kept in saloons in towns

of that size, that I made an inquiry, I think, and some investigation to find out why he was carrying a stock which was all double stamped goods; double stamped goods are straight distillery goods. He carried a very high grade of liquors, Old Crow, Hermitage, Penwick Rye, and that class of goods. I think he had one barrel that ran up to 120 proof; a very high grade of goods, and he had quite a stock of it. It was in barrels, and the barrels were racked up and the barrels were all tapped. I tested quite a bit of it, because I felt it was my duty to do so on account of the size of the town, but he gave me a very reasonable explanation of why he carried that class of goods in his place. He had some very old liquors, reimported goods; reimported goods are goods that are taken across the water and brought back here to increase the quality of the liquor. Old Crow, three years old, when it would be put out of bond, would cost in the neighborhood of three to four and a half a gallon, that is the younger age. Six or seven years old, it would be worth seven to ten a gallon. If ten years old it is worth seven, some of it ten. Liquor that is six years old would be worth five or six a gallon. It is a lot owing to the amount of absorption and the amount of liquor lost. Some barrels will char quicker than others and the proof will run up higher; that means there is a loss of quantity [455] in the barrel and a higher proof. Mr. Black's saloon is a higher class of saloon than the general run. He had quite a large supply of liquors. I think he kept a pretty fair supply of cigars, that is my impression. Rectified goods are compounded goods. Certain

wholesalers and rectifiers have a license to rectify goods, and they take alcohol and Green River whiskey and mix them together, putting water in and bring the proof down to about sixty or eighty-five, somewhere along there, and put coloring matter in there, and sometimes caramel, to give it a mellow taste. I do not think he had a single bit of rectified goods in his place. I think all of his goods were bottled in bond. They are bottled under Government supervision at the bonded warehouses at the distilleries, and they are bottled at 100 proof and the Government stamp is put over the cork. There is a very heavy penalty for refilling any of these bottles. It is our duty to see that none of these bottles are refilled. These liquors I spoke of were in Mr. Black's saloon in Ilwaco. I was in Mr. Black's saloon the last time about five years ago. I was in his saloon only once after he moved to Long Beach, that was in 1908.

III.

Said District Court erred in overruling the objection of the defendant to the following question propounded by counsel for plaintiff to the witness, S. A. Madge.

Q. For instance, if a person kept that for several years, supposing he got a barrel of these double stamped goods in 1903, and it cost three or four and a half a gallon, what would be its value six or seven years later?

To which counsel for the defendant objected on the [456] ground that the witness was not qualified to give testimony as to the value of liquor, which

objection was overruled, to which ruling the defendant excepted, and the exception was then and there allowed.

IV.

Said District Court erred in overruling defendant's objection to the following question propounded by counsel for plaintiff to the witness, S. A. Madge.

Q. Do you know what they cost per gallon, barrel, etc.?

A. Well, Old Crow would cost in the neighborhood of three year old, when it would be put out of bond, would cost in the neighborhood of three to four and a half a gallon, that is the younger age.

Counsel for defendant moved that said answer be stricken out for the reason that said witness was not qualified; which motion was denied by the Court, to which ruling the defendant then and there excepted, which exception was allowed.

V.

Said District Court erred upon the trial of said cause, in permitting counsel for the plaintiff to offer, and in admitting over the objection and exception of the defendant, plaintiff's alleged proof of loss (Plaintiff's Exhibit 3), which was objected to by the defendant for the reason that it contained property not covered by the policy, and on the further ground that it contained a gross and exaggerated value of the property, and was not such a proof of loss as is required by the terms of the policy, which exhibit is as follows: [457]

Wm. Black v. Central National Fire Insurance Co. Plaintiff's
Exhibit 3.

INVENTORY ATTACHED TO AND BEING PART OF
BULK LIQUORS ON HAND, PROOF OF LOSS, UN-
BROKEN PACKAGES.

| | | | |
|-------------------------------|---------|----------------------------------|---------|
| bbl. tapped gallon old. | 5 bbls. | Old Crow Jan. 2, 1906..... | 1000.00 |
| Not tapped | 4 — | Cedar Brook McBrayer 1903..... | 800.00 |
| Untapped | 3 — | Green River 1902..... | 750.00 |
| bbls. not tapped | 3 — | Penryck 1904..... | 400.00 |
| gal. drawn. | 1 — | Old Crow 1899..... | 350.00 |
| Not tapped | 1 — | Fox Mountain 1896..... | 400.00 |
| bbl. not tapped | 2 — | A. G. McBrayer single stamp..... | 300.00 |
| | 1 — | Wicklow | 125.00 |
| | 1 — | California Port wine..... | 75.00 |
| | 1½ | Imported Port wine 16 gall..... | 75.00 |
| | 1½ | California Brandy 16 gall..... | 40.00 |
| | 1½ | Rum Hudson Bay..... | 50.00 |
| | 4 gall. | Gin Box jug..... | 9.00 |
| | 5 Cases | Whiskey flasks | 20.00 |
| Untapped | 2 Bbls. | Clark Bros. whiskey | 214.35 |
| | 1000 | Attencion Cigars | 35.00 |
| | 500 | Alhambra — | 17.00 |
| | 5 bbls. | Bottled beer | 47.50 |
| | 900 | Y. & B. Cigars | 81.00 |
| | 800 | El Rayo — | 72.00 |
| | 500 | Gato — | 45.00 |
| | 1600 | Optimos — | 144.00 |
| | 500 | Van Dyck — | 45.00 |
| | 100 | Carabana — | 9.00 |
| | 100 | Loveras — | 9.00 |
| | 200 | Carletons — | 12.00 |
| | 200 | Eschelles — | 12.00 |
| | 800 | Manilla — | 40.00 |
| | 7 Boxes | Egyptian Cigarettes | 7.00 |
| | [458] | | |
| | 1 box | Egyptian Luxury Cigarettes | 2.50 |
| | 1 — | Pall Mall Imported — | 2.50 |

476 *Central National Fire Ins. Co. of Chicago, Ill.*

| | | | |
|----|-------|---|--------|
| 5 | Cases | Joe Gideon whiskey..... | 62.50 |
| 15 | — | Joel B. Frazier & 8 bottles in show case... | 180.00 |
| 22 | — | Roxbury Rye 7 bottles in show c.... | 220.00 |
| 4 | — | Guggenheimer 5 — — — — | 40.00 |
| 4 | — | Old Crow Bourbon 9 — — — — | 50.00 |
| 4 | — | Hermitage 6 — — — — | 50.00 |
| 4 | — | Gibson Rye 3 — — — — | 40.00 |
| 2 | — | Pebble Ford 8 — — — — | 25.00 |
| 2 | — | McBrayer 9 — — — — | 27.00 |
| 1 | — | Cyrus Noble 4 — — — — | 14.00 |
| 3 | — | Atherton 9 — — — — | 40.00 |
| 4 | — | W. H. Lacey | 40.00 |
| 2 | — | Yellowstone | 25.00 |
| 2 | — | Holland Gin Imp. 14 — — — — | 45.00 |
| 2 | — | Gordon — — 9 — — — — | 30.00 |
| 2 | — | Martelle Brandy — 6 — — — — | 40.00 |
| 2 | — | J. Hennessy — — 9 — — — — | 36.00 |
| 4 | — | Sazarae — — 3 — — — — | 50.00 |
| 2 | — | Scotch Whiskey — 10 — — — — | 30.00 |
| 1 | — | Old Curio — — | 20.00 |
| 4 | — | Sloc Gin | 40.00 |
| 1 | — | Jamaica Rum — | 14.00 |
| 2 | — | Canadean Club Whiskey 7 — — — — | 17.50 |
| 1 | — | Mountain Dew Scotch — | 14.00 |
| 3 | — | Italian Vermouth | 24.00 |
| 1 | — | French — | 9.00 |
| 2 | — | Maraschino Cherries | 12.00 |
| 2 | — | Rock & Rye | 14.00 |
| 2 | — | Pineapple Rock & Rye | 20.00 |

1166.50

[459]

| | | | |
|---|---------|--------------------------|-------|
| 1 | Case | Benedictine Imp..... | 35.00 |
| 6 | bottles | Creme de Menthe Imp..... | 12.00 |
| 6 | — | Creme de Cocoa — | 12.00 |
| 1 | — | Picon | 2.00 |
| 2 | — | Boonekamp bitters | 2.00 |

| | | |
|----------|------------------------------|-------|
| 2 Cases | Claret wine | 9.00 |
| 2 — | Muscat — | 9.00 |
| 2 — | Angelica — | 9.00 |
| 2 — | Madeira — | 9.00 |
| 2 — | Sherry — | 9.00 |
| 2 — | Tokay — | 9.00 |
| 4 — | Cresta Blanca—Margam | 36.00 |
| 2 — | Sparkling Burgundy pts. | 26.00 |
| 2 — | — — qts. | 26.00 |
| 3 — | Mont Rouge—Sauterne — | 30.00 |
| 2 — | Mont Rouge—Burgundy — | 24.00 |
| 6 Doz. | Beer Glasses | 12.00 |
| 2 — | Water — | 2.75 |
| 5 — | Whiskey — | 8.00 |
| 2 Sets | Measures Copper | 12.00 |
| 2 — | Funnels — | 12.00 |
| 8 Doz. | Bar & Glass Towels..... | 24.00 |
| 8 | Decanters | 8.00 |
| 25 gross | Corks all sizes..... | 4.00 |

353.75

[460]

| | | |
|---------|---------------------------------------|-------|
| 4 Doz. | 1 gal. Demijohns | 20.00 |
| 5 — | $\frac{1}{2}$ — — | 15.00 |
| 2 — | Champagne glasses | 4.00 |
| 2 — | Port wine — | 3.00 |
| 2 — | Brandy — | 3.00 |
| 2 — | Cocktail — | 3.00 |
| 2 — | Vermouth — | 3.00 |
| 2 — | Benedictine — | 3.00 |
| 3 Cases | Sauterne Van Schuyver | 13.50 |
| 2 — | Old Tom Gin J. W. Nicholson Imp. | 22.50 |
| 2 — | Lash Bitters | 16.00 |
| 1 — | Ginger Brandy | 8.00 |
| 2 — | Virginia Dare Wine | 12.00 |
| 1 — | Lyons Cocktails | 12.00 |
| 1 — | Mumms Champagne | 37.00 |

478 *Central National Fire Ins. Co. of Chicago, Ill.*

| | |
|--|--------|
| 1 Can Alcohol 4¾ gall. | 12.00 |
| 2 Cases Dameana Bitters..... | 16.00 |
| 1 Drum Bass's Ale, Imported | 16.00 |
| 1 case Stout Imported | 14.00 |
| 2 Bbls. Budweiser beer, qts. | 25.00 |
| 28 bottles Lock wine | 11.00 |
| 1 qt. Jamaica Ginger | 1.50 |
| 1 — Essence Peppermint | 1.50 |
| 2 Cases White Rock Mineral Water | 17.00 |
| 1 — Bartlett — — | 8.50 |
| 1 bbl. Soda Water | 8.50 |
| 1 — Ginger Ale | 8.50 |
| 5 — Weinhard bottled beer | 45.00 |
| 2 Cases Grape Juice, large size | 9.00 |
| | <hr/> |
| | 320.50 |

[461]

| | |
|---|--------|
| 1 bbl. Mellwood Whiskey about 15 gall. | 37.50 |
| 1 keg — — 3 — | 7.50 |
| 1 — Old Crow 2½ — | 6.25 |
| 20 bottles various liquors on back bar..... | 25.00 |
| 126 — in show cases aver. 1.25 p. bot. | 157.50 |
| 6 broken boxes cigars, about 300 ave. 75.00 per M..... | 22.50 |
| Cordials, mineral waters, soda waters, beer and ales in back bar | 30.00 |
| 20 gall. Blackberry brandy..... | 50.00 |
| 1 — Dry Sherry 1.25 gal. | 12.50 |
| | <hr/> |
| | 348.75 |

Recapitulation:

| | |
|--------------|---------|
| Sheet 1..... | 5189.35 |
| — 2..... | 1166.50 |
| — 3..... | 353.75 |
| — 4..... | 320.50 |
| — 5..... | 348.75 |
| | <hr/> |
| | 7378.85 |

[462]

For further information in regard to value of the different whiskey would refer you to the Internal Revenue offices at Tacoma, also Mr. Locke of the firm of Greenbaum Bros., Louisville, Kentucky, residing at 1130 Hawthorne Ave., Portland, Julius Friedman of Blumacher & Hock and Mr. Adams of Fleckenstein & Son, Frank Botefuhe (?) and Julius Wellman of Brown, Forman & Co. As to cigars I bought of Mason, Ehrman & Co., Gurst & Co., Hart Cigar Co., Taylor of Astoria, representing Sohbacker & Co. If necessary will furnish sworn affidavits from above people and other prominent persons who are familiar with my stock as I wish you to understand that I desire the fullest investigation. That I have nothing to conceal and can substantiate everything that is stated in above inventory.

Remaining

Yours respectfully.

WM. BLACK. [463]

No. of Policy 590757 Amount of Policy \$5000.00

PROOF OF LOSS

to the

Central National Fire Insurance Company of
Chicago, Ill.

BY YOUR POLICY OF INSURANCE NUMBERED 590757 issued at your Agency at Long Beach, Wash. commencing at 12 o'clock noon, on the 17th day of June, 1912, and terminating at 12 o'clock noon, on the 17th day of June, 1913, you insured Wm. Black against loss and damage by fire to the amount of Five Thousand Dollars according to the terms and conditions of said Policy, the written por-

tion thereof, together with an exact copy of all endorsements, assignments and transfers, being as follows, viz. :

MERCHANDISE FORM.

\$5000.00 on his stock of merchandise, consisting principally of wines, liquors, soda and mineral waters, beer & cigars and all other goods, wares and merchandise not more hazardous kept for sale by assured, while contained in two story shingle roofed Frame building and adjoining and communicating additions thereto, while occupied as saloon, and situate lot 6, blk. 6, Tinkers north addition to Long Beach, Pacific County, Wash.

\$—— on store furniture and fixtures while contained in said building.

\$—— other concurrent insurance permitted.

POWDER AND KEROSENE. — Permission granted to keep for sale not to exceed fifty pounds of gunpowder and five barrels of kerosene oil, the latter to be of not less than the United States standard of 110 degrees, neither to be handled or sold by artificial light.

ELECTRIC LIGHTS.—Permission for electric lights, it being agreed that wires shall be doubly coated with approved insulating material, and protected where they enter buildings, by porcelain or hard rubber insulators, and shall also have fusible cut-offs.

LIGHTNING CLAUSE.—This policy shall cover any direct loss or damage caused by lightning, (meaning thereby the commonly accepted use of the

term lightning, and in no case to include loss or damage by cyclone, tornado or windstorm,) not exceeding the sum insured, nor [464] the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy: PROVIDED, however, if there shall be any other insurance on said property this company shall be liable only pro-rata with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not; and provided further that, if dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this company shall not be liable for any loss or damage to such property resulting from any electrical injury or disturbance, whether from artificial or natural causes, unless fire ensues, and then for the loss by fire only.

Attached to and forming a part of Policy No. 590757 of the CENTRAL NATIONAL FIRE INSURANCE CO. OF CHICAGO, ILLINOIS.

HENRY KAYLER,

Agent.

Loss, if any, payable to Wm. Black.

The total insurance on said property, or any part thereof, at the time of the fire, including this policy, was Five Thousand Dollars.

A fire occurred on the 27th day of June, A. D. 1912, at about the hour of 1:30 o'clock A. M., by which the property insured was destroyed, or damaged, as herein set forth, and which originated as follows: Cause unknown.

THE CASH VALUE of each specified subject insured at the time of the fire and the actual loss and damage thereon by said fire as ascertained by appraisal, or by mutual agreement, and the whole amount of Insurance thereon were as follows:

1st Item of Policy. Sound value, \$8000.00. Total loss, 8000.00. Total Insurance, 5000.00. Total Claim Under Insurance, 5000.00. Claimed of this Insurance Co. 5000.00.

And the insured claim of the above-named COMPANY, by reason of said loss, damage, and Policy of Insurance, the sum of Five [465] Thousand Dollars, in full of their proportion of said loss.

The property insured belonged exclusively to Wm. Black.

If the loss is on building, state whether Real Estate is owned in fee simple or held on lease. Fee simple.

State the nature and amount of incumbrance at the time of the fire. None.

The total value of property saved is \$ none as per statement attached hereto, marked Schedule ———.

The building insured, or containing said property, was occupied in its several parts by the parties hereinafter named and for the following purposes, to-wit: William Black, saloon, and for no other purpose whatever.

The said fire did not originate by any act, design, or procurement on part of assured, nor on the part of any one having any interest in the property insured, or in the said Policy of Insurance; nor in consequence of any fraud or evil practice done or suffered by

said assured, that nothing has been done by or with the privity or consent of assured to violate the conditions of the Policy, or to render it void; and then no articles are mentioned herein but such as were in the building damaged or destroyed, and belonging to, and in the possession of the said insured at the time of the said fire; that no property saved has been in any manner concealed, and that no attempt to deceive the said Company as to the extent of said loss or otherwise, has in any manner been made. Any other information that may be required will be furnished on call, and considered a portion of these proofs.

It is furthermore understood and agreed that all bills, invoices, schedules and statements made by the assured, and attached to this Proof of Loss, are to be incorporated into this proof, and are hereby duly sworn to and made a part thereof.

The furnishing of this blank to assured, or making up proofs by Adjuster for Company, is not to be considered as a waiver of any rights of the Company.
[466]

Witness my hand at Long Beach, Wash. this 22nd day of August 1912.

WILLIAM BLACK.

Personally appeared Wm. Black, signer of the foregoing statement who made solemn oath to the truth of the same, and that no material fact is withheld that the said Company should be advised of before me this 22d day of August 1912.

HENRY KAYLER,

Notary Public in and for the State of Washington,
Residing at Long Beach, Wash. [467]

VI.

Said District Court erred upon the trial of said cause in overruling defendant's motion to strike out the following answers given by the witness, Don H. Dickinson:

Q. Do you know the amount and value of the liquors that Black had there?

A. No, sir, I don't the exact amount; I know it is way up in the thousands.

Defendant moved the Court that said answer be stricken out as it was not shown that said witness was competent to testify, and for the reason that said answer was not responsive to the question, which motion the Court denied, and to this ruling of the Court the defendant then and there excepted, which exception was allowed.

VII.

Said District Court erred in overruling the objection of counsel for defendant to the following question propounded by counsel for plaintiff to the witness, William Black:

Q. What was the market value of the goods lost by you in this fire of June 27, 1912?

To which counsel for the defendant objected upon the ground that it was not shown that the witness was qualified or familiar with the market value of said property; which objection was overruled, to which ruling defendant then and there excepted; which exception was allowed.

VIII.

Said District Court erred upon the trial of above-entitled cause in denying the motion of counsel for

defendant to strike out the testimony of the witness, W. A. Hagermeyer, to which ruling of the Court the defendant then and there [468] excepted, which exception was allowed. Said witness having previously testified as follows: I reside in Tacoma. Am in the retail liquor business. I have bought and sold liquors about three years. Am acquainted with the brand of whiskey known as "Old Crow," also with the brand known as "Penwick Rye." Am also acquainted with the brand known as "Cedar Brook McBrayer's." The fair market value per gallon of the whiskey known as "Old Crow" brand of the 1906 vintage, double stamp, I should judge ought to be five or six dollars per gallon. I should judge the fair market value of the Cedar Brook McBrayer's 1903 vintage, double stamp, should be about six dollars, somewheres along in there, and the Green River double stamp 1902 vintage, ten and twelve years old, not less than seven dollars. I have some goods that were not bought by myself, but bought by my predecessor, wines and so on, that are over twelve years old. I still have parts of them on hand. The prices which I gave are prices where liquor is sold by the gallon out of a retail store. I am not in the wholesale liquor business. I don't know anything about the wholesale value of these liquors during June, 1912, I do not know what wholesalers have to pay for their goods. I do not think that these prices which I mention would include the retailer's profit. I hardly think there would be any profit in selling at that price. I bought some of this kind of whiskey in 1912. I do not remember what my partner paid for

them. I didn't myself, personally, buy any of these ages that have been mentioned. If a man was to buy a barrel of any of these different brands and ages of liquors mentioned in 1912 he would have to pay somewhere near I think those prices. That would be to buy by the barrel. The only way I bought any of these ages was in partnership. My partner did the buying and I paid the bills. [469] I think my partner bought some Old Crow of the year 1906. As near as I can remember he paid about five dollars per gallon, from five to six and a half. He bought it in 1912 in San Francisco. I think in June of 1912.

IX.

Said District Court erred upon the trial of said cause in refusing to sustain the motion of the defendant for judgment of nonsuit made at the close of plaintiff's testimony on the ground that the plaintiff had refused to furnish the defendant with copies of his purchases and invoices and on account of his refusal to perform any of the other terms or conditions on his part to be performed, and for the further reason that the market value of the property had not been shown, which motion was denied by the Court; to which ruling of the Court the defendant excepted, and the exception was then and there allowed.

X.

Said *District erred* upon the trial of the above cause in denying the motion of counsel for the defendant that the Court direct a verdict in favor of the defendant, for the reason that the testimony conclusively showed that the plaintiff had been guilty

of false swearing in violation of the terms of the policy, and especially in connection with his alleged proof of loss; which motion was denied by the Court, to which ruling defendant then and there excepted, which exception was allowed.

XI.

Said District Court erred in giving and entering a judgment in favor of the plaintiff and against the defendant for the sum of five thousand dollars, with interest thereon at the rate of six per cent per annum from the sixth day of December, 1912. [470]

XII.

Said District Court erred in giving and entering a judgment in favor of the plaintiff and against the defendant for interest on \$5000.00 at six per cent per annum from December 6, 1912.

XIII.

Said District Court erred in denying the motion of defendant to set aside the verdict and judgment, and to grant a new trial.

XIV.

Said District Court erred in refusing to instruct the jury as requested by defendant, as follows:

The insurance policy in this case provides that the entire policy shall be void if the insured shall be guilty of any fraudulent or false swearing touching any matter relating to the insurance or the subject thereof, whether before or after loss. If you find from the evidence that the plaintiff in this case has wilfully, or carelessly, made claim for loss exceeding the true market value of the property destroyed, or wilfully or carelessly made claim for property not destroyed

in the fire and made affidavit to the same, then in that event he cannot recover in this action. False swearing consists of stating a fact as true which the party does not know to be true. If the plaintiff has inserted in his sworn proof of loss any articles as burned which were not burned and knowingly puts such false and excessive valuation on single articles or on the whole property as displays a reckless disregard of truth, he cannot recover.

XV.

Said District Court erred in refusing to instruct the jury as requested by defendant, as follows:
[471]

It appears from the evidence in this case that the plaintiff on or about the 25th day of August, 1913, submitted to the defendant a sworn proof of loss, wherein the plaintiff claimed that the value of the property destroyed in the fire and covered by the policy amounted to the sum of \$7378.87. If you find from the evidence that the plaintiff knew the property destroyed in the fire was of a value substantially less than the amount or that he could, by the exercise of reasonable diligence, have known that said property was of substantially less value, he cannot recover in this action, even though the actual market value of the property exceeds the sum of five thousand dollars.

XVI.

Said District Court erred in refusing to instruct the jury as requested by defendant, as follows:

If you find from the evidence that the plaintiff in his sworn proof of loss, placed an excessive valuation

on the whole property burned, or on single portions or quantities thereof, and that such excessive claim was wilfully or carelessly made, then your verdict should be for the defendant.

XVII.

Said District Court erred in refusing to instruct the jury as requested by defendant, as follows:

The jury is instructed that there is no evidence as to the market value of the case of goods and therefore they must be eliminated from the case.

XVIII.

Said District Court erred in instructing the jury, over the exception and objection of the defendant as follows: [472]

It is provided by the statute of the State of Washington (Sec. 105, Laws of 1911, p. 243), as follows:

Every insurer who makes insurance upon any building or property or interest therein against loss or damage by fire, and every agent who issues a fire insurance policy covering on any building or property or interests therein, and every insured who procures a policy of fire insurance upon any building or property or interest therein owned by him, is presumed to know the insurable value of the building or property or interest therein at the time such insurance is affected. Under this provision of the law I charge you that the defendant insurance company was presumed to know at the time it issued this policy of insurance in the sum of \$5000.00 covering the property described in said policy; and situated in the buildings described in said policy, the value of said property. If it now claims otherwise the burden of

proof rests with the defendant to so show by a fair preponderance of the evidence.

XIV.

Said District Court erred in failing to instruct the jury that if the property described in plaintiff's complaint and in the policy of insurance was destroyed by the act, procurement or design of the plaintiff, they should return a verdict in favor of the defendant.

WHEREFORE, defendant prays that the judgment of the District Court may be reversed, and that said Court be directed to dismiss the complaint herein and to enter judgment for the defendant for its costs and disbursements.

COLE & COLE,

Attorneys for Defendant. [473]

I certify that the foregoing assignment of errors was made in behalf of the defendant above named for a writ of error herein, and is in my opinion well taken, and the same now constitutes the assignment of errors upon the writ herein.

BARTLETT COLE,

One of Defendant's Attorneys.

Due and legal service of the foregoing assignment of errors upon me, at Tacoma, Washington, this — day of January, 1914, is hereby admitted.

Attorneys for Plaintiff.

Filed in the U. S. District Court, Western District of Washington, Southern Division. Jan. 27, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [474]

Petition for Writ of Error.

Now comes the Central National Fire Insurance Company of Chicago, the defendant herein, and says that on the 30th day of October, 1913, this Court entered judgment herein in favor of William Black, the plaintiff above named, and against this defendant, Central National Fire Insurance Company of Chicago, for the sum of \$5,000 with interest thereon at the rate of 6% per annum from the 6th day of December, 1912, and the costs and disbursements of said action, taxed at \$210.50;

That on the 1st day of December, 1913, said District Court overruled the motion of said defendant to set aside said judgment, and for a new trial in said cause, and said judgment has now become final in said District Court, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this defendant, all of which will appear more in detail from the assignment of errors, which is filed with this petition. Defendant herein now makes the following assignment of errors upon which it will rely, and which will be made to appear by the return of the said records in obedience to said writ of error herein prayed for.

WHEREFORE, this defendant prays that a writ of error may issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit for correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to

the said United States Circuit Court of Appeals.

CENTRAL NATIONAL FIRE INSUR-
ANCE COMPANY, OF CHICAGO,

By BARTLETT COLE,

One of Attorneys for Petitioner. [475]

COLE & COLE,

Attorneys for Petitioner.

[Endorsed]: Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Jan. 27, 1914. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy. [476]

[Order Allowing Writ of Error.]

On this 28th day of January, 1914, comes the defendant above named, Central National Fire Insurance Company, of Chicago, by Bartlett Cole, one of its attorneys, and files herein and presents to the Court its petition praying for the allowance of a writ of error and the assignment of errors intended to be urged by it, and praying also that the transcript of record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the Court does hereby allow a writ of error, upon the defendant giving bond, according to law in the sum of \$7,000, which shall operate as a *supersedeas* bond.

Dated this 28th day of January, 1914.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jan. 28, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [477]

Bond [on Writ of Error].

KNOW ALL MEN BY THESE PRESENTS, That we, the Central National Fire Insurance Company, of Chicago, a corporation, as Principal, and the United States Fidelity & Guaranty Company, a corporation, as Surety, are held and firmly bound unto William Black, in the sum of Seven Thousand Dollars (\$7,000) to be paid to said William Black; for which payment well and truly to be made, we bind ourselves and our successors, jointly and severally, by these presents.

Sealed with our seals this 30th day of January, 1914.

WHEREAS, Lately at a District Court of the United States for the Western District of Washington, Southern Division, in an action pending in said court between William Black, plaintiff, and Central National Fire Insurance Company, of Chicago, defendant, a judgment was rendered against the defendant and in favor of the plaintiff for the sum of \$5,000, with interest thereon at the rate of 6% per annum from December 6, 1912, and costs taxed at \$210.50, and

WHEREAS, said Central National Fire Insurance Company of Chicago, is prosecuting a Writ of Error to the United States Circuit Court of Appeals to reverse the judgment in the above-entitled action given and entered by said District Court of the United States for the Western District of Washington, Southern Division, on the 30th day of October, 1913.

NOW, The condition of this obligation is such, that if the said Central National Fire Insurance Company, of Chicago, shall prosecute said Writ of Error to effect and answer all damages and costs and satisfy said judgment if it shall fail to make said plea good, then the above obligation to be void; [478] otherwise to remain in full force and virtue.

CENTRAL NATIONAL FIRE INSURANCE COMPANY, OF CHICAGO.

By FRANK E. DOOLY,

Its General and Special Agent Hereunto Authorized,
Principal.

UNITED STATES FIDELITY & GUARANTY COMPANY.

[Seal of Surety Company.]

By C. H. CAMPBELL,

Its Attorney in Fact,

Surety.

Witness:

BARTLETT COLE.

JAMES COLE.

The above bond examined and approved this 3d day of Feb., 1914.

EDWARD E. CUSHMAN,

Judge.

[Endorsed]: "Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 3, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy." [479]

[**Writ of Error (Copy).**]

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America, to
the Honorable Judge of the District Court of the
United States for the Western District of Wash-
ington, Southern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said District Court before you, between William Black, plaintiff and defendant in error, and Central National Fire Insurance Company, of Chicago, a corporation, defendant and plaintiff in error, manifest error hath happened, to the great damage of the said Central National Fire Insurance Company, of Chicago, defendant and plaintiff in error, as by its complaint doth appear, we, being willing that error, if any there has been, should be duly corrected, and full and speedy justice be done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at San Francisco, in said Court within thirty

days from the date hereof, in said Circuit Court of Appeals, to be then and there held. That the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States Supreme Court, this 3d day of February, [480] 1914, and in the one hundred thirty-eighth year of the Independence of the United States of America.

[Seal] FRANK L. CROSBY,
Clerk of the United States District Court for the
Western District of Washington, Southern Division.

By E. C. Ellington,
Deputy Clerk, U. S. District Court, Western District
of Washington.

Allowed by:

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Feb. 3, 1914. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy. [481]

Citation on Writ of Error [Copy].

United States of America,
Western District of Washington,
Southern Division,—ss.

To William Black and Hayden, Langhorne and Metzger, and J. J. Brumbach, His Attorneys, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Southern Division, wherein Central National Fire Insurance Company, of Chicago, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Tacoma, in said District, this 3d day of February, in the year of our Lord, one thousand nine hundred and fourteen.

[Seal]

EDWARD E. CUSHMAN,

Judge.

Due and legal service of the within Citation on writ of errors, by certified copy thereof prepared and certified to as such by Bartlett Cole, as one of the attorneys for the plaintiff in error, is hereby made upon

498 *Central National Fire Ins. Co. of Chicago, Ill.*
me at Tacoma, Washington, this 3d day of February,
1914.

HAYDEN & LANGHORNE & METZGER,
MAURICE LANGHORNE,
Attorneys for Defendant in Error. [482]

[Endorsed]: Filed in the U. S. District Court,
Western Dist. of Washington, Southern Division.
Feb. 3, 1914. Frank L. Crosby, Clerk. By F. M.
Harshberger, Deputy. [483]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States
District Court for the Western District of Washing-
ton, do, in pursuance of the command of the Writ of
Error within herewith transmit and herewith certify
the foregoing to be a full, true and correct transcript
of the record in the case of Central National Fire In-
surance Company, plaintiff in error and defendant
against William Black, defendant in error and
plaintiff, lately pending in this District, as required
by the praecipe of counsel filed in said case.

And I further certify that attached hereto are the
original Writ of Error, original Citation, and original
order extending time for return on Writ of Error,
and original Certificate by Judge Cushman as to
Rule of Court.

I further certify that the cost of preparing and
certifying the foregoing transcript amounted to the

sum of \$326.50, which amount has been paid to me by counsel for plaintiff in error.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this Court, at Tacoma, in said District, this first day of April, A. D. 1914.

[Seal]

FRANK L. CROSBY,

Clerk.

By E. C. Ellington,

Deputy Clerk. [484]

[Writ of Error (Original).]

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America, to
the Honorable Judge of the District Court of the
United States for the Western District of Wash-
ington, Southern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said District Court before you, between William Black, plaintiff, and defendant in error, and Central National Fire Insurance Company, of Chicago, a corporation, defendant and plaintiff in error, manifest error hath happened, to the great damage of the said Central National Fire Insurance Company, of Chicago, defendant and plaintiff in error, as by its complaint doth appear, we, being willing that error, if any there has been, should be duly corrected, and full and speedy justice be done to the parties afore-

said, in this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at San Francisco in said Court within thirty days from the date hereof, in said Circuit Court of Appeals, to be then and there held. That the record and proceedings aforesaid being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS, The Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States Supreme Court, this 3d day of February, 1914, and in the one hundred thirty-eighth year of the Independence of the United States of America.

[Seal] FRANK L. CROSBY,
Clerk of the United States District Court for the
Western District of Washington, Southern Division.

By E. C. Ellington,
Deputy Clerk, U. S. District Court, Western District
of Washington.

Allowed by:

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: No. ——. In the District Court of the United States for the Western District of Washington. William Black, Plaintiff, vs. Central Na-

tional Fire Insurance Company, of Chicago, Defendant. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 3, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

Citation on Writ of Error [Original].

United States of America,
Western District of Washington,
Southern Division,—ss.

To William Black and Hayden, Langhorne & Metzger, and J. J. Brumbach, His Attorneys, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Southern Division, wherein Central National Fire Insurance Company, of Chicago is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Tacoma, in said District, this 3d day of February, in the year of our Lord one thousand nine hundred and fourteen.

[Seal]

EDWARD E. CUSHMAN,

Judge,

Due and legal service of the within Citation on writ of errors, by certified copy thereof prepared and certified to as such by Bartlett Cole, as one of the attorneys for the plaintiff in error, is hereby made upon me at Tacoma, Washington, this 3d day of February, 1914.

HAYDEN, LANGHORNE & METZGER,
MAURICE LANGHORNE,

Attorneys for Defendant in Error.

[Endorsed]: No. ——. In the District Court of the United States for the Western District of Washington, Southern Division. William Black, Plaintiff, vs. Central National Fire Insurance Company, of Chicago, Defendant. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 3, 1914. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

WILLIAM BLACK,

Plaintiff,

vs.

CENTRAL NATIONAL FIRE INSURANCE COM-
PANY, OF CHICAGO,

Defendant.

Certificate [of Hon. Edward E. Cushman, U. S. District Judge, as to Rule 58 of U. S. District Court].

United States of America,
State of Washington,
County of Pierce,—ss.

I, E. E. Cushman, a Judge of the District Court of the United States for the Western District of Washington, Southern Division, do hereby certify that there has been adopted and promulgated by the above-entitled court prior to the trial of above cause certain printed rules of practice. That Rule #58 of the above-entitled court is as follows, to wit:

“Exceptions to a Charge.—Exceptions to a charge to a jury, or to a refusal to give as a part of such charge instructions requested in writing, may be taken by any party by stating to the Court, after the jury have retired to consider of their verdict, and if practicable before the verdict has been returned, that such party excepts to the same, specifying by numbers of paragraphs or in any other convenient manner the parts of the charge excepted to, and the requested instructions the refusal to give which is excepted to; whereupon the Judge shall note such exceptions in the minutes of the trial or cause the reporter (if one is in attendance) so to note the same.”

I further certify that all of defendant's exceptions to instructions given to the jury were taken in open court and noted by the reporter; that all of the defendant's exceptions to the refusal of the Court to

give its requested instructions were taken in open court and noted by the reporter;

That at the conclusion of the Court's charge to the jury, the jury was dismissed by the Court before the defendant had an opportunity to take any exceptions to the instructions given, or to the refusal to give the requested instructions.

Dated March 30, 1914.

EDWARD E. CUSHMAN,
District Judge.

[Endorsed]: No. ——. In the District Court of the United States, for the Western District of Washington. William Black, Plaintiff, vs. Central National Fire Insurance Company, of Chicago, Defendant. Certificate. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Mar. 30, 1914. Frank L. Crosby, Clerk. By E. C. Ellington, Deputy.

[Endorsed]: No. 2395. United States Circuit Court of Appeals for the Ninth Circuit. Central National Fire Insurance Company of Chicago, Illinois, a Corporation, Plaintiff in Error, vs. William Black, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

Received and filed April 2, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.